No. 74-1267

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, COMPOSED OF ITS MEMBERS PEDRO SANTIAGO RIVERA, LEONEL A. FERNANDEZ, GENARO NEGRON, JUAN M. PORTELO SOLER, GUILLERMO CRUZ AND MILTON CASTRO NAZARIO,

Appellants

v.

MARIA C. FLORES DE OTERO,

Appellee

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS, AND THE MEMBERS OF SUCH BOARD,

Appellants

v.

SERGIO PEREZ NOGUEIRO,

Appellee

On Appeal from the United States District Court for the District of Puerto Rico

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

TO THE HONORABLE COURT:

Appellants take these appeals from the judgments of the United States District Court For the District of

Puerto Rico, entered on December 19, 1974 [1] and February 5, 1975, [2] respectively, declaring unconstitutional and permanently enjoining the enforcement of the statute requiring that the applicants be citizens of the United States in order to be granted a full license as engineers, architects and surveyors. 20 L.P.R.A. 689. Appellants submit this statement to show that the Supreme Court of the United State has jurisdiction over the appeals and that substantial questions are presented.

OPINIONS BELOW

The opinions of the District Court For the District of Puerto Rico are not yet reported. Copies of the opinions and judgments are attached hereto. (Appendix A and Appendix B)

JURISDICTION

These suits were brought under 28 U.S.C. 1343(3) and (4) to redress the alleged deprivation of appellees' constitutional rights. Three-judge courts were convened pursuant to 28 U.S.C. 2281. The judgments of the District Court were entered on December 19, 1974 and February 5, 1975 and Notices of Appeal were filed on January 22, 1975 and March 10, 1975, respectively (Appendices C and D). The jurisdiction of this Honorable Court to review the judgments is conferred by Title 28, United States Code, Section 1253. *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663, 94

[1] *María C. Flores de Otero* v. *Examining Board, etc.* Civil No. 917-73.

[2] *Sergio Pérez Noqueiro* v. *Board of Examiners, etc.* Civil No. 74-520.

S.Ct. 2080, 40 L.ed. 2d 452, reh. den. 417 U.S. 977, 94 S.Ct. 3187, 41 L.ed. 2d 1148.[3]

QUESTIONS PRESENTED

1. WHETHER THE DISTRICT COURT HAD JURISDICTION OVER THESE COMPLAINTS PURSUANT TO TITLE 28, UNITED STATES CODE, SECTION 1343 (3)(4).

2. WHETHER THE DISTRICT COURT SHOULD HAVE ABSTAINED FROM PASSING UPON THE INTERPRETATION AND VALIDITY OF THE STATUTE INVOLVED.

3. (a) WHETHER THE STRICT TESTS OF JUDICIAL SCRUTINY REGARDING 'STATE' CLASSIFICATIONS OF ALIENS IS FULLY APPLICABLE TO STATUTES ENACTED BY COMMONWEALTH LEGISLATURE, OR

(b) IF THEY ARE APPLICABLE, WHETHER THE STATUTE HEREIN COMPLIES WITH THE CRITERIA SET FORTH IN *In Re Griffiths*, 413 U.S. 717, 93 S.Ct. 2851, 37 L.ed. 2d 910 (1973).

STATUTES INVOLVED

The statute, 20 L.P.R.A. 689, can be found at Appendix E, and is officially reported at pages 226 to 228 of the 1973 Supplement to Volume 4A of the Laws of Puerto Rico Annotated.

STATEMENT [4]

María C. Flores de Otero is a native of Mexico, not a citizen of the United States and resides in Puerto Rico. Her applications for registration as a licensed engineer

[3] Because there are two cases appealed from the same court involving identical questions, this single jurisdictional statement suffices. Rule 15(3) of this Court.

[4] The cases were submitted on the pleadings and memoranda filed by the parties. No evidentiary hearing was held.

were denied on the basis of her lack of United States citizenship. She brought an action in the United States District Court for the District of Puerto Rico seeking that section 689 be adjudged unconstitutional for being in conflict with the due process and equal protection clauses. The complaint did not specify which Amendment, the Fifth or Fourteenth of the United States Constitution is applicable. She also sought injunctive relief. A Three-Judge Court was convened and it entered judgment in her favor.

Sergio Pérez Nogueiro is a native of Spain who is residing as an alien in Puerto Rico. He is presently working as an engineer for the Municipality of Carolina pursuant to a conditional license granted by the Board, as authorized by the statute. He brought this action seeking a full unconditioned license to practice as an engineer in the Commonwealth. Judgment was entered on his favor, on the basis of the prior judgment in the María C. Flores de Otero case.

Section 689 provides that in addition to the educational and experience requirements, it shall be required that applicants for registration be citizens of the United States of America and reside in the Commonwealth of Puerto Rico for no less than a year before filing of their applications.[5] It further provides that the citizenship requirement shall not apply to applicants who have studied the total courses and have received their grade or certificate in the Commonwealth. The citizenship requirement does not apply to applicants whom the agencies and instrumentalities of the Commonwealth Government, its municipalities

[5] The residence requirement is not here contested.

and public corporations employ or wish to employ.[6] These aliens are granted a conditional certificate to practice their professions in those public entities.

In its opinion the District Court found jurisdiction upon 42 U.S.C. 1983 and 28 U.S.C. 1343.[7] It refused to abstain and wait for an interpretation by the Commonwealth courts because in its view the citizenship requirement is clear and unmistakable and no conceivable gloss placed upon it by the local courts could turn aside the argument that the classification is unconstitutional. The Court cited in support of its conclusion, *Zwickler* v. *Koota,* 389 U.S. 241, 248-50 (1967), and *Arias* v. *Examining Board of Refrigeration and Air Cond. Technicians,* 353 F. Supp. 857 (D.P.R. 1972).

On the merits, the District Court applied the strict test used by this Honorable Court in *In Re Griffiths,*

[6] They do not have to be employed by the government and its agencies at the time of the application and examination.

[7] These statutes provide:

§ 1983

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

§ 1343

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote".

413 U.S. 717, 37 L. Ed. 2d 910, 93 S. Ct. 2851 (1973), which held that a State classification based upon alienage is suspect even if used to regulate entry to a profession, and the State has to show a compelling interest which is both constitutional, permissible and substantial and that the classification is necessary to achieve the purpose or safeguard its compelling interest. By using such a strict test, the Court found that the interest invoked by the Commonwealth did not justify the classification. It rejected the argument that the Commonwealth had to protect itself against an uncontrollable invasion of alien engineers. It also held that the classification had no reasonable relationship with Article 1483 of the Civil Code, 31 L.P.R.A. 4124.[8] Said article imposes liability upon contractors for damages caused by them within ten years of the construction of the building work, etc.

The Court also rejected the contention that this Court had repudiated its holding in *In Re Griffiths, supra,* and similar cases, when it decided *Espinosa* v. *Farah Manufacturing Co.,* 414 U.S. 86, 38 L. ed. 2d 287, 94 S. Ct. 334 (1973).

Thus the decisions declared the statute invalid; enjoined appellants from enforcing it and ordered them to grant unconditioned licenses to appellees.

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[8] Said Article reads as follows:

"The contractor of a building which may have been destroyed by reason of defects in the construction shall be liable for the losses and damages if said building should collapse within ten years, to be counted from the completion of the construction; and during the same time the same liability shall be incurred by the architect who may have directed the work if the collapse is due to defects in the ground or in the direction.

If the cause should be the noncompliance of the contractor with the conditions of the contract, the action for indemnity may be brought within fifteen years".

THE QUESTIONS ARE SUBSTANTIAL

Summary of Argument

This Honorable Court should note probable jurisdiction and decide the question presented due to their importance in the field of the existing relationship between the United States and the Commonwealth of Puerto Rico.

a. The question as to whether Commonwealth statutes are State statutes under 28 U.S.C. 1343 was expressly left open in *Calero-Toledo* v. *Pearson Yacht Leasing Co., supra.* Since there is no other jurisdictional basis for the actions in these cases, this appeal provides a particularly adequate opportunity to this Court to definitely pass upon that previously undecided question. We respectfully submit that the District Court had no jurisdiction over these cases.

b. We also contend that the District Court erroneously declined to abstain in this case. Our position is that the abstention doctrine is particularly appropriate when Commonwealth statutes are challenged in the Federal Courts. That conclusion is evident from the holdings in *Fornaris* v. *Ridge Tool Co.,* 400 U.S. 41, 27 L. ed. 2d 174, 91 S. Ct. 156 (1970); *Wackenhut Corp.* v. *Aponte,* 386 U.S. 268, 18 L. ed. 2d 37, 87 S. Ct. 1017 (1967), affirming judgment in 266 F. Supp. 401 (DPR 1966), and *Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 416 U.S. 663, 94 S. Ct. 2080, 40 L. ed. 2d 452 (1974).

c. On the merits of the constitutional question, we submit that the strict test of compelling state interest to justify a clasification is not appropriate in the case herein. As has been recognized by this Court, the Commonwealth enjoys a special unique relationship with the United States which warrants the application of far

less strict tests of interpretation of its local statutes. If the Court considers the different situation in Puerto Rico, in light of the local realities which include the large concentration of Spanish speaking aliens, extreme overpopulation and the largest unemployment rate in the United States, then it will find that the classification is both necessary and valid.

A. The Court Below Erred in Holding That It Had Jurisdiction Founded upon 42 U.S.C. 1983 and 28 U.S.C. 1343.

In *Calero-Toledo, supra,* 40 L. ed. 2d at 464, fn. 11, this Court expressed that:

> "We have no occasion to address the question whether Puerto Rico is a 'State' for purposes of 28 U.S.C. 1343 [28 USCS 1343], a jurisdictional basis of appellee's complaint".

It did not reach the question because jurisdiction was found to exist under 28 U.S.C. 1331. In these cases the only jurisdictional basis is 28 U.S.C. 1343. This by itself establishes that this question is so substantial as to require plenary consideration, with briefs on the merits and oral argument, for its resolution. Section 1343 came into being as part of the Civil Rights Acts enacted during the late 1860's and 1870's. It was one of the means established to award jurisdiction to the federal courts over actions against the State to redress deprivation of constitutional rights which were mostly uncontrolled after the Civil War. Together with the predecessor of 42 U.S.C. 1983, it was enacted to vindicate rights protected by the Fourteenth Amendment. For a historical view of 1343, see *Zwickler* v. *Koota,* 389 U.S. 241, 88 S. Ct. 391, 19 L. ed. 2d 444 (1967).

In this case jurisdiction under 1343 depends upon the applicability to the Commonwealth of Article 1 of

the Civil Rights Act, 42 U.S.C. 1983. *District of Columbia* v. *Carter,* 409 U.S. 418, 34 L. ed 2d 613, 93 S. Ct. 602, reh. den. 410 U.S. 959, 35 L. ed. 2d 694, 93 S. Ct. 1411 (1973), held that the District of Columbia was not a "State or Territory" within the purposes of 42 U.S.C. 1983 and that the District Court lacked jurisdiction over a claim based upon that section. The Court made a complete historical analysis of the Civil Rights Acts and found that 1983 was enacted as a means to "enforce the provisions of the Fourteenth Amendment", *Carter, supra,* 34 L. ed. 2d at 619. Since the District is not a State within the meaning of the Fourteenth Amendment, neither the District nor its officers are subject to its restrictions. Thus this Court held that section 1983 is not applicable to the District. This was based upon an extensive examination of the legislative history of 1983 and the nature of the District of Columbia.

As to the legislative history of section 1983, there is no question that the evils which it sought to correct were never present in Puerto Rico. On the contrary both before and after the birth of the Commonwealth in Puerto Rico, the local courts have had the power and the willingness to protect and enforce federal rights. See *Mongil Suárez* v. *Administrador Deporte Hipico,* 354 F. Supp. 320 (DPR, 1972); 4 L.P.R.A. 62.[9]

Like the District, the Commonwealth is truly *sui generis* within the national governmental structure,

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[9] 4 LPRA 62 reads as follows:

> "The Court of First Instance is a court of original general jurisdiction with power to act in the name and by the authority of the Commonwealth of Puerto Rico in all civil and criminal proceedings as hereinafter provided. . . ."

Note that the state courts can decide civil rights actions. *Brown* v. *Pitchess,* California Supreme Court, 2/19/75, 16 Cr. L. 2516.

Carter, supra, 34 L. ed. 2d at 625. It is significant that this Court has compared the nature of the District with that of the Commonwealth. *Palmore* v. *United States,* 411 U.S. 389, 36 L. ed. 2d 342, 93 S. Ct. 1670, where this Court recognized that the District of Columbia is constitutionally distinct from the States. As it did in *Fornaris, supra,* this Court held that a statute of the District is not a State statute for the purpose of 28 USC 1257. The Court also held that the rationale of *Balzac* v. *Porto Rico,* 258 U.S. 298, 66 L. ed. 627, 42 S. Ct. 343 (1922), that a Puerto Rican statute was a State statute for purposes of appeal was severely undermined in *Fornaris.* The situation herein is similar to the one present in *Fornaris* and *Palmore.* That is, sections 1983 and 1343 should not be held applicable to the Commonwealth in the absence of a more definitive guidance from Congress. *Palmore,* 36 L. ed. 2d., at page 351.

Although the source of congressional power over the District (Art. 1, sec. 8, cl. 17 of the Constitution) is different than the one in Puerto Rico, both possess different traits than the States or Territories. The source of congressional power over the Commonwealth is the compact between the United States and Puerto Rico (Public Law 600, 64 Stat. 319; 66 Stat. 327, note 48 U.S.C. 731 d.) *Calero-Toledo, supra.* Thus the question as to whether a particular congressional enactment is applicable to Puerto Rico has to be answered in terms of the Compact; that is, whether their applicability is consonant with the Compact. See *Caribtow Corp.* v. *Occupational Safety and Health Review Comm.,* 493 F. 2d 1064 (1 CA, 1974); *N.L.R.B.* v. *Security National Life Ins. Co.,* 494 F. 2d 336; *Hodgson* v. *Union Empleados de los Supermercados Pueblo,* 371 F. Supp. 56 (DPR 1974); *Liquilux Gas Services of Ponce, Inc.* v.

Tropical Gas Co., 303 F. Supp. 414 (DPR 1969), and cases cited therein. And see, Leibowitz, The Applicability of Federal Law To The Commonwealth of Puerto Rico, 56 GEO. L. J. 219 (1967).

That same flexible approach has been used by this Court. Compare *Fornaris* v. *Ridge Tool Co., supra* (Puerto Rico not a State for the purposes of this Court's appellate powers, 28 U.S.C. 1257), and *Calero-Toledo, supra* (Puerto Rico is a State for the purposes of the Three-Judge-Court Act, 28 U.S.C. 2281). In neither of this two cases did this Court find it necessary to express whether the Fifth or Fourteenth Amendment is applicable to Puerto Rico.

Thus the question of the applicability of the Civil Rights Statutes, depends upon an interpretation of the Compact and the pertinent statutes. This Court recognized in *Calero-Toledo* that the Compact had brought about significant changes in Puerto Rico's governmental structures, the main one being a much higher degree of autonomy and sovereignty over purely local matters. This novel political experiment strengthened the relationship between Puerto Rico and the Federal government and has turned the Island into a highly unique and *sui generis* structure within the United States federal system. It would be inconsistent with the deference shown by Congress and this Court, to Puerto Rico's government and with the nature of the political structure brought about by the Compact, to subject all the local statutes and actions to the strict supervisory powers of the federal courts.[10]

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[10] Although Puerto Rico possesses a higher degree of sovereignty than the District, Congress still possesses power to legislate over it, due to the provision of the Federal Relations Act, 48 U.S.C. 734, which continued in effect by virtue of the Compact.

Because Puerto Rico is not a "State" within the full meaning of that term; *Fornaris, supra, Sánchez* v. *U.S.*, 376 F. Supp. 239 (DPR 1974); *Mora* v. *Torres*, 113 F. Supp. 309, 319 (DPR 1953); or a Territory, within the constitutional context used in the *Carter* case, *Acevedo Montalvo* v. *Hernández Colón*, 377 F. Supp. 133, *Hodgson, supra*, neither the Civil Rights Acts, 42 U.S.C. 1981, 1983, nor their jurisdictional counterpart, 28 U.S.C. 1343, are applicable to Puerto Rico.[11]

B. The District Court Should Have Abstained from Reaching the Merits of the Constitutional Claim.

The Court below declined to abstain because the statute was clear and free from doubt. As this Court recently held, *Harris County Comm. Court, et al.* v. *Moore*, February 18, 1975, 43 LW 4222, abstention is appropriate where the uncertain status of local law stems from the unsettled relationship between the state constitution and a statute. In the case at bar the relationship is two fold. First of all, appellants argued that the classification excluding aliens is justified by the provisions of Article 1483 of the Civil Code, which deals with causes of action against engineers, architects, etc. It is evident that there is a significant relationship

[11] This contention has been rejected by the local district court, *Marin* v. *U.P.R.*, 337 F. Supp. 613 (DPR 1973) and the Court of Appeals for the First Circuit, *Ortiz v. Colón*, Case No. 74-1115, unpublished opinion of February 28, 1975, but we submit that they did not fully consider the question. Of course this Honorable Court should have the final word in this matter. They were mainly based upon their preoccupation that the residents of Puerto Rico would have less protection than their counterparts in the 50 States. But as expressed in *Mora* v. *Mejías*, 206 F.2d 377 (1953), cited with approval in *Calero-Toledo, supra*, 40 L.Ed. 2d at 461-62, Puerto Rico has not become State like the other States. See also *Sánchez* v. *U.S., supra*, holding Puerto Ricans have no right to vote in presidential elections. This is one of the differences in treatment between residents in Puerto Rico and the 50 States.

between the two. But it is uncertain whether the exclusion is justified, under local law, by the Civil Code provisions. No pertinent decision by the local court exists which deals with the question whether the exclusion is necessary to give effect to the protections established by Article 1483. There is also a close relationship between the statute and the local Constitution. The local Court has not had the opportunity to analyze, in the context of this case, the scope of section 1 of Article I of our Constitution which establishes that "No discrimination shall be made on account of race, color, sex, birth, social origin or condition, or political or religious ideas".

The Supreme Court of Puerto Rico should have the opportunity of interpreting whether the statutory exclusion conflicts with this prohibition against discrimination due to birth or origin, together with the general clause as to equal protection of the laws. Article II, section 7 of the Constitution and whether it is justified by the Civil Code provision.

We submit that the *Moore* decision, *supra*, has expanded the abstention doctrine in a manner favorable to the States. This is more so in the case of Puerto Rico, where this Court has consistently used a far more liberal test in favor of the local construction of its laws. *Fornaris, supra, Wackenhut, supra*, cited with approval in *Calero-Toledo, supra*. In *Wackenhut, supra*, the Court expressly held that:

> " 'application of the doctrine of abstention is particularly appropriate in a case . . . involv[ing] the construction and validity of a statute of the Commonwealth of Puerto Rico. For a due regard for the statutes of the Commonwealth under its compact with the Congress of the United States dictates, we believe, that it should have the primary opportunity through its courts to determine the

intended scope of its own legislation and to pass upon the validity of that legislation under its own constitution as well as under the Constitution of the United States.' "

This criteria was adopted with the specific holding that the special regard due to the Commonwealth warrants absention. If this reality is considered with the pre-Commonwealth respect and deference given by this Court to the local interpretations of the Civil Code and related statutes,[12] then the absention doctrine is even more appropriate.

In addition, abstention is more appropriate here because it would serve to avoid "the hazard of unsettling some delicate balance in the area of federal-state relationships". Justice Harlan's concurrent opinion in *Zwickler* v. *Koota,* 389 U.S. 241, 19 L. ed. 444, 454-55, 88 S. Ct. 391. Abstention in cases dealing with Commonwealth statutes clearly serves this purpose. It should be specially noted that an Ad Hoc Commission has been named to study the special relationship between Puerto Rico and the United States for the purpose of studying, of proposing legislation, and formulate recommendations tending to satisfy the aspirations of the people freely expressed in the 1967 plebiscite.[13]

[12] "Out of that experience grew a pronouncement that a Puerto Rican Court should not be overruled on its construction of local law unless it could be said to be 'inescapably wrong'. See Bonet v. Texas Co., 308 U.S. 463, 471, 84 L. ed. 401, 60 S. Ct. 349". *Fornaris* v. *Ridge Tool, supra,* 27 L. ed. 2d at 177.

[13] This Commission is a consequence of congressional action contained in Public Law 88-271 of February 20, 1964 and the action of the Legislature of Puerto Rico Law Number 9 of April 13, 1964. The present Joint Committee was appointed upon the request of the Government of Puerto Rico by the President of the United States and the Governor of Puerto Rico. Among the areas under study is the problem of aliens' entry into Puerto Rico.

In this particular case abstention is appropriate because the local ruling could avoid the necessity of passing upon the federal claim. If the statute is found unconstitutional, no further litigation is needed. On the other hand if a justification is found, then the only aspect remaining would be if the same meets the pertinent tests.

C. The Court Erred in Applying the Compelling State Interest to the Commonwealth Statutes And/Or It Erred in Rejecting the Justification Advanced by Appellants.

The District Court applied the strict test of compelling state interest following the holding in *In Re Griffiths* that classifications limiting aliens' rights and opportunities are suspect. While that test might be appropriate in dealing with the 50 States,[14] both the general nature of the Commonwealth status and the specific factual situation in regard to the aliens' presence in Puerto Rico, warrant a different approach.

We have already extensively cited the cases which recognize the special status of the Commonwealth of Puerto Rico. It is a truly unique relationship and a new concept in the constitutional scheme of this country. Thus the Court should not have automatically applied the same criteria applied to the States, especially where the States are governed by the 14th Amendment, which has never been expressly held to apply to the

[14] There are now two cases before this Court which deal with the extension of the holdings in *Sugarman* v. *Dougall,* 413 U.S. 634 (1973), 37 L. ed. 2d 910, 93 S. Ct. 2842, and *In Re Griffiths, supra,* to the Federal Government under the Fifth Amendment. *Wong Sun* v. *Hampton,* 500 F.2d 1031 (9 C. 1974), cert. granted 41 L. ed. 2d 664, and *Ramos* v. *U.S. Civil Service Comm.,* 376 F. Supp. 361 (DPR 1974), appeal filed, 43 LW 3173. These cases might serve to clarify the scope of the prior holdings.

Commonwealth. *Calero-Toledo, supra,* ft. 5 at 40 L.ed. 2d 460. There the Court extended to Puerto Rico's statutes the same deference as state statutes but that does not mean that the same test of construction is to govern both situations. Because the uniqueness of the constitutional and political relationship between the two sovereignties, purely local statutes should not be overturned unless there is no justification for them or its unconstitutionality is so obvious on its face and the government authority of the Commonwealth would be so untrammeled by the requirements of the fundamental constitutional rights, that both the United States Constitution and the Compact would be violated. The above test would not narrow the application of the fundamental rights of the people of Puerto Rico but would rather recognize the relationship between the Compact and the applicable provisions of the United States Constitution.

If the above test were to be applied, then the District Court should have found that the statute involved reasonable means to achieve legitimate local interests or that there was a rational basis for the statute.

The District Court did not consider the special and unique situation of Puerto Rico in regard to the nature of the alien problem. The latest official information is that there are over fifty-four thousand aliens in Puerto Rico. Most of these aliens come from Spanish-speaking countries.[15] Due to the common language, same cultural and historical background, same kind of climate, geography, and better educational and economic facilities in Puerto Rico, than in their original countries, these aliens tend to come to the Island rather

[15] The two appellees in this case come from Mexico and Spain.

than going to the other States where they would confront different conditions. If the Court considers that at the present time the Commonwealth is confronting serious overpopulation[16] and economic problems, especially in connection with its unemployment figure, which is almost double the national one,[17] that the per capita income is $1,834,[18] and that 76.5% of the basic food products and commodities have to be imported, thus causing generally higher prices, then the Court most find that the statute is valid and necessary. We submit that the above situation clearly establishes that the Commonwealth has either a compelling interest or a legitimate one in trying to partially control the negative effects of an uncontrolled influx of aliens into professions which can be legitimately regulated by the State, due to their impact in the public and the economy.

[16] The 1970 Census Report shows that the small island of Puerto Rico has a population 2,712,033 persons of which 52,792 are foreign born. (1970 Census Population, Detailed Characteristics, Puerto Rico, a United States Department of Commerce Publication; Table 110, page 53-601.) 851, 247,000 live in the San Juan metropolitan area, which has 43,264 foreign born. Id, at 53-603. This is due to the geography of the island and that the government and business concentrations are in this area. It should be noted that the vast majority of the foreign born are from Spanish-speaking countries. For example, there are 26,000 persons born in Cuba, 10,843 born in the Dominican Republic, 4,120 from Spain and 1,269 from Venezuela. Id. Table 112 at 53-621. There were in 1970, 5,800 Cubans living in the San Juan area. Id. 53-622.

[17] The latest official figure is 17% of the labor force. But it is suspected that the real figures come close to 30%. These problems are compounded by the vast numbers of illegal aliens who enter into the island without adequate control by the federal immigration authorites.

[18] This is far less than the per capita income of the poorest state of the United States, Mississippi, which had approximately $3,000.

This is particularly so in the case of engineers, architects and surveyors, who play a major role in the industrial and economic expansion in the island. Construction is one of the first industries in Puerto Rico, both in the private and public sectors. That is why the Civil Code has always tried to protect those citizens who might suffer injuries due to construction defects and enacted Article 1483 of the Civil Code.[19] Also the Commonwealth has a duty to assure the citizenry that these professionals who are daily entering into contracts worth millions of dollars, have a sufficient interest in remaining in the island so they can be held accountable and responsible for their tortious or illegal acts. Obviously if aliens are permitted to practice the professions herein involved without any limitations, serious problem affecting the citizenry as a whole may arise.[20]

We also submit that the decision in *Espinosa* v. *Farah Maunfacturing Co., Inc.*, 414 U.S. 86, 38 L.ed. 2d 287,

[19] See also the statutory scheme which gives the Secretary of the Department of Consumer Affairs the duty to regulate, impose fines, etc. on constructors who fail to live up to their obligations. 17 LPRA 501 to 519, as amended by Law 116 of June 7, 1963 (1974 Cumulative Pocket Supp., 17 LPRA 516 at page 6) These protections might also be affected by the decision herein.

[20] It should be noted that appellees are not prohibited from practicing their profession. Under the statute they can and are presently employed by government agencies. The statute also provides that those aliens who study their career in Puerto Rico have the right to seek an unrestricted license. Thus unlike the *Sugarman* situation, there is no undiscriminate prohibition. The legislators obviously thought that the evils to be corrected are not present in these two situations. The government engineers, etc., are only employees in public works and have an extensive supervision. The ones that complete their full studies in Puerto Rico have an interest in remaining in the island and they are already part of the community.

94 S.Ct. 334 (1973), tends to undermine the rationale in the *Sugarman* and *Griffiths* cases. *Espinosa* gives an almost absolute discretion to private employers in their hiring practices. Although it is true that *Espinosa* only interprets a federal statute, it will have far reaching effects. And the *Sugarman* and *Griffiths* effects might be further undermined if this Court rules in favor of the federal government in the cases now pending before it. (*Hampton* and *Ramos, supra*)

We repeat that in Puerto Rico the appropriate test should be that of a rational basis for legislation, in which case any valid interest would sustain the statute. *Dandridge* v. *Williams*, 397 U.S. 471, 25 L.ed. 2d 491, 90 S.Ct. 1153 (1970). But even if the compelling state interest test is used, the statute should be upheld.

CONCLUSION

For the stated reasons, we submit that the questions presented are so substantial as to require plenary considerations, with briefs on the merits and oral argument, for their resolution.

San Juan, Puerto Rico, on this 2nd day of April, 1975

MIRIAM NAVEIRA DE RODON
Solicitor General

PETER ORTIZ GUSTAFSON
Deputy Solicitor General

APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

CIVIL NO. 917-73

MARIA C. FLORES DE OTERJ,
Plaintiff

v.

EXAMINIG BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, composed of its members, Pedro Santiago Rivera, Leonel A. Fernandez, Genaro Negron, Juan M. Portela Soler, Guillermo Cruz Gonzalez and Milton Castro Nazario,
Defendants

Judgment

This Court having come for a final hearing before a Three Judge Court, Judges Coffin, Toledo and Pesquera sitting and the issues having been heard and the opinion of the Court having been duly rendered, Judge Pesquera dissenting,

It is ORDERED, ADJUDGED and DECREED, that Section 689 of Title 20, Laws of Puerto Rico Annotated, is unconstitutional, invalid and unenforceable to the extent indicated in the opinion; and

It is further ORDERED, ADJUDGED and DECREED, that plaintiff Maria C. Flores de Otero be licensed by defendants as an engineer; and

It is further ORDERED, ADJUDGED and DECREED that defendants are enjoined from enforcing the citizenship require-

ment of Section 689 of Title 20, Laws of Puerto Rico Annotated.

San Juan, Puerto Rico, December 19,1974.

/s/ Frank M. Coffin
Frank M. Coffin
U. S. Circuit Judge

/s/ Jose V. Toledo
Jose V. Toledo
Chief Judge, U. S. District Court

United States District Court
District of Puerto Rico

No. 917-73

Opinion

Coffin, *Curcuit Judge*. This action challenges the constitutionality of Section 689 of Title 20 of the Laws of Puerto Rico, and our jurisdiction is founded upon 42 U.S.C. § 1983 and 28 U.S.C. § 1343. Plaintiff as a native of Mexico and by profession a civil engineer. She is a resident of Puerto Rico, but not a citizen of the United States, and has been denied registration as a licensed engineer by defendants on the ground that she has failed to meet the citizenship requirement embodied in the statute.

Defendants urge that we abstain from reaching the constitutional issue and await an authoritative interpretation of the challenged statute by the courts of the Commonwealth *Railroad Comm'n* v. *Pullman Co.*, 312 U.S. 496 (1941). Such abstention would be appropriate were the statute one which was susceptible of an interpretation which would obviate the need to decide the constitutional question, *Fornaris* v. *Ridge Tool Co.*, 400 U.S. 41 (1970), but this is not such a case. The statutory requirement of citizenship is clear and unmistakable, and no conceivable gloss placed upon it by the Supreme Court of Puerto Rico could turn aside plaintiff's

argument that this classification based on alienage is unconstitutional. We therefore decline to abstain. *Zwickler* v. *Koota*, 389 U.S. 241, 248-50 (1967); *Arias* v. *Examining Board of Refrig. & Air Cond. Technicians*, 353 F. Supp. 857 (D. P.R. 1972).

In *Arias, supra*, this court struck down as unconstitutional a citizenship requirement for admission to a profession, but found it unnecessary to decide whether the equal protection standard to be applied was rationality or "strict" review based upon the existence of an inherently suspect classification. *Id* at 861. The subsequent Supreme Court decision in *In re Griffiths*, 413 U.S. 717 (1973), established that a classification on the basis of alienage is suspect even when used to regulate entry to a profession and can be justified only by reference to a compelling state interest. *See Sugarman* v. *Dougall*, 413 U.S. 634 (1973); *Graham* v. *Richardson*, 403 U.S. 365 (1971); *Takahashi* v. *Fish & Game Comm'n*, 334 U.S. 410 (1948). We have examined each of the state interests put forward for consideration by defendants, and find none that measures up to this standard.

The suggestion that the Commonwealth may use a citizenship requirement to protect itself against an "uncontrollable invasion of alien engineers" flies in the face of the principle that discrimination for its own sake is not a constitutionally permissible purpose. *In re Griffiths, supra*, 413 U.S. at 72 n. 8. The other state interest asserted by defendants relates to Article 1483 of the Puerto Rico Civil Code (1930). That statute imposes upon a contractor liability for damages resulting from the collapse of a building within ten years of its construction. Defendants argue that a resident who does not become a citizen "is a poor risk to comply with the cited article".

There is no demonstrated relationship between citizenship and the likelihood that an individual will meet this obligation, and we think it clear that whatever link may exist is too tenuous to establish a compelling interest in denying licenses to all aliens. *In re Griffiths* is once again instruc-

tive, for there the Supreme Court rejected a proferred state justification much like that put forward here in holding that a State Bar Examining Committee had "failed to show the relevance of citizenship to any likelihood that a lawyer will fail to protect faithfully the interest of his clients." 413 U.S. at 724. The justification offered by the Commonwealth fails in another respect as well. Even if we were to assume that a citizen with ties to Puerto Rico is more likely to live up to the statutory obligation than a resident who is a noncitizen, we would be forced to reject any argument that a citizen with primary ties to a part of the United States other than Puerto Rico would be an appreciably better risk, with regard to the statute, than a noncitizen.

The last argument with which we must deal is defendants' contention that *Espinoza* v. *Farah Manufacturing Co.*, 414 U.S. 86 (1973), represents a repudiation of *Griffiths* and the other cases prescribing close judicial scrutiny of classifications based on alienage. The citation of *Espinoza* is inapposite. The issue decided by that case was a narrow one of statutory construction—whether the denial of private employment to aliens ran afoul of the provision in Title VII in the Civil Rights Act of 1964 forbidding discrimination on the basis of national origin—and *Espinoza* thus has no bearing upon the issue before this court.

Because we have found the citizenship requirement to be unconstitutional, defendants are directed to license plaintiff as an engineer.

So Ordered.

/s/ Frank M. Coffin
Frank M. Coffin
U.S. Circuit Judge

/s/ Jose V. Toledo
Jose V. Toledo
Chief Judge, U.S. District Court, District of Puerto Rico

Dated at San Juan, Puerto Rico, December 19, 1974.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

Civil No. 917-73

Dissenting Opinion

Pesquera, District Judge, (Dissenting)

For the same reasons stated in dissenting opinion in *Santin Ramos* v. *United States Civil Service Commission and Cabrera Gomez* v. *Butz*, 376 F. Supp. 361 (May 29, 1974), I am once more constrained to dissent in this line of cases.

San Juan, Puerto Rico, December 19, 1974.

/s/ Hernan G. Pesquera
Hernan G. Pesquera
U. S. District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

CIVIL No. 74-520

SERGIO PEREZ NOGUEIRO,
Plaintiff

v.

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND
SURVEYORS OF PUERTO RICO, AND THE MEMBERS
OF SUCH BOARD,
Defendants.

Memorandum and Order

Before COFFIN, *Circuit Judge;*
TOLEDO AND PESQUERA, *District Judges.*

ENTERED.

The case presents precisely the issue decided by this Court in *Flores de Otero* v. *Examining Board* (No. 917-73) (December 19, 1974), and thus judgment will be entered for plaintiff.

San Juan, Puerto Rico, February 4, 1975.

/s/ FRANK M. COFFIN
Frank M. Coffin
U.S. Circuit Judge

/s/ JOSE V. TOLEDO
Jose V. Toledo
U.S. District Judge

Judge Pesquera dissents.

HERNAN G. PESQUERA
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

CIVIL No. 74-520

SERGIO PEREZ NOGUEIRO,
Plaintiff

v.

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND
SURVEYORS OF PUERTO RICO, AND THE MEMBERS
OF SUCH BOARD,
Defendants.

Judgment

This action having come for a final hearing before a Three Judge Court, Judges Coffin, Toledo and Pesquera sitting, and the issues having been heard and the opinion of the Court having been duly rendered, Judge Pesquera dissenting,

It is ORDERED, ADJUDGED AND DECREED, that plaintiff Sergio Perez Nogueiro be licensed by defendants as an engineer.

San Juan, Puerto Rico, February 4, 1975.

/s/ FRANK M. COFFIN
Frank M. Coffin
U.S. Circuit Judge

/s/ JOSE V. TOLEDO
Jose V. Toledo
U.S. District Judge

/s/ HERNAN G. PESQUERA
Hernan G. Pesquera
U.S. District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

Civil No. 917-73

Maria C. Flores de Otero,
Plaintiff

v.

Examining Board of Engineers, Architects and Surveyors, composed of its members, Pedro Santiago Rivera, Leonel A. Fernández, Genaro Negrón, Juan M. Portela Soler, Guillermo Cruz González and Milton Castro Nazario,
Defendants

Notice of Appeal

To The Honorable Court:

Notice is hereby given that the Defendants above named, hereby appeal to the Supreme Court of the United States, from the final judgment entered on this action on December 19, 1974.

This appeal is taken pursuant to 28 U.S.C. 1253.

San Juan, Puerto Rico, January 22, 1975

Miriam Naveira De Rodon
Solicitor General

Peter Ortiz
Deputy Solicitor General

[*Proof of Service Omitted in Printing*]

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

Civil No. 74-520

Sergio Perez Nogueiro,
Plaintiff

v.

Board of Examiners of Engineers, Architects and Surveyors of Puerto Rico, and the Members of Such Board,
Defendants

Notice of Appeal

To The Honorable Court:

Notice is hereby given that Defendants, Board of Examiners of Engineers, Architects and Surveyors of Puerto Rico and Leonel Fernández, Genaro Negrón, Guillermo Cruz González, Víctor Labión, Pedro Santiago Rivera, Milton Castro Nazario and Juan M. Portela, as members of said Board, hereby appeal to the Supreme Court of the United States from the final judgment entered in this action on February 5, 1975.

This appeal is taken pursuant to 28 USC 1253.

San Juan, Puerto Rico, this 10 day of March, 1975.

Miriam Naveira De Rodon
Solicitor General

Peter Ortiz
Deputy Solicitor General

[*Proof of Service Omitted in Printing*]

APPENDIX E

§ 689. Qualifications for registration in the Board's registry

As minimum evidence, satisfactory to the Board, to show that the applicant meets the qualifications for registration as licensed engineer, architect or surveyor, or for his certification as graduate engineer or architect, the Board shall accept, as the case may be:

(1) For graduate engineer or architect:

(a) *Graduation and examination.* Graduation from a course or curriculum of engineering or architecture, of a duration of not less than four academic years or its equivalent, whose efficacy has been adequately verified, in any university, college or institute whose standing and degree of proficiency are accepted by the Board, and the passing of written examinations (validation) on the fundamental subjects of engineering or architecture.

(2) For licensed engineer or architect:

(a) *Graduation, examination and minimum experience.* A certification accrediting his graduation from a course or curriculum of engineering or architecture, of a duration of not less than four (4) academic years or its equivalent, whose efficacy has been adequately verified, in any university, college or institute whose standing and proficiency are accepted by the Board; passing of written examinations (validation) on the fundamental subjects of engineering or architecture; and detailed history of his professional experience of not less than four years, acquired after his graduation as a professional, satisfactory to the Board, and showing, in the judgment of the Board, that the applicant is qualified to practice as engineer or architect with a degree of professional responsibility which justifies his licensing. Every professional who has met the requisites required to be licensed as a graduate professional shall be relieved from the presentation of the evidence

which, for such purpose, may already be in the possession of the Board, including the passing of the examinations given by the Board when he was authorized as a graduate engineer, as provided in subdivision (1)(a) of this section. The Board may, in its discretion, consider as devoted to acquire experience, all or part of the time devoted to teaching or of higher studies of a professional nature after graduating as engineer or architect. In case the evidence submitted in the application with respect to the experience does not appear conclusive to the Board, or does not, in the opinion thereof, show the existence of sufficient guarantee and justification for the licensing, the applicant may be required to submit additional evidence on any particular thereof

(3) For licensed surveyor:

(a) *Studies, experience and examination.* Certification showing that the applicant has passed a course or curriculum in engineering lasting not less than two years, or has completed the studies in surveying, the sufficiency of which has been duly ascertained and accepted by the Board; a detailed statement of at least two years' professional experience, satisfactory to the Board, and showing, in the judgment thereof, that the applicant is qualified for the practice of surveying; and passing of written examinations (validation) on the fundamental subjects of surveying.

In addition to what has already been provided in this section, it shall be required that applicants for registration in the Board's registry be citizens of the United States of America and reside in the Commonwealth of Puerto Rico for not less than one year before filing their applications. Provided, that the requisite of being a citizen of the United States of America shall not apply to engineers, architects and surveyors who have studied the total courses and have received their corresponding grade or certificate in the

Commonwealth of Puerto Rico provided that the approved course of study and institution where he has studied fulfill the qualifications fixed by sections 681-710 of this title, as the case may be; Provided, That the applicants shall meet all the qualifications fixed by this act for registration in the Board's registry.

The requisites of residence and United States citizenship shall not apply to engineers, architects or surveyors whom the different agencies or instrumentalities of the Government of the Commonwealth, the municipal governments and the public corporations employ or may wish to employ, it being understood that it shall not be necessary that the applicants be so employed at the time of their application or registration in the Board's registry. The applicants shall meet all the other qualifications fixed by sections 681-710 of this title for registration in the Board's registry.

Upon compliance with these requirements by a non-citizen of the United States of America, the board shall issue a conditional certificate as graduate engineer, architect or surveyor or a conditional license as engineer, architect or surveyor, as the case may be, valid for the practicing of such professions only in the performance of this employment and during the time they are employed by the above-mentioned public entities. The Board shall be empowered to establish special standards relative to the conduct, transfer of employment and absence from the Commonwealth of such certified or licensed persons, it being understood that the professional acts of said engineers, architects and surveyors shall have the same legal effects and shall be subject to the duties and laws of the Commonwealth in the same manner as the acts of the professionals registered in the Board's registry.

Any engineer, architect or surveyor holding a conditional license or graduate engineer or architect with a conditional certificate who obtains the citizenship of the United States of America shall be entitled to apply for registration and

be reregistered in the Board's registry as a graduate engineer or architect, or a licensed engineer or architect, or a licensed surveyor, as the case may be, in accordance with all the other requirements of the Board. —Amended June 99, 1964, No. 119, p. 380, § 1, eff. June 29, 1964; June 8, 1967, No. 121, p. 368, § 1, eff. June 8, 1967.

Supreme Court, U. S.
FILED
OCT 10 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1267

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, COMPOSED OF ITS MEMBERS PEDRO SANTIAGO RIVERA, LEONEL A. FERNANDEZ, GENARO NEGRON, JUAN M. PORTELO SOLER, GUILLERMO CRUZ AND MILTON CASTRO NAZARIO,

Appellants

v.

MARIA C. FLORES DE OTERO,

Appellee

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS, AND THE MEMBERS OF SUCH BOARD,

Appellants

v.

SERGIO PEREZ NOGUEIRO,

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

FILED APRIL 7, 1975

PROBABLE JURISDICTION NOTED MAY 27, 1975

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1267

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, COMPOSED OF ITS MEMBERS PEDRO SANTIAGO RIVERA, LEONEL A. FERNANDEZ, GENARO NEGRON, JUAN M. PORTELO SOLER, GUILLERMO CRUZ AND MILTON CASTRO NAZARIO,

Appellants

v.

MARIA C. FLORES DE OTERO,

Appellee

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS, AND THE MEMBERS OF SUCH BOARD,

Appellants

v.

SERGIO PEREZ NOGUEIRO,

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

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RELEVANT DOCKET ENTRIES

I. Maria C. Flores v. Examining Board, etc. Civil No. 917-73

1. 10/15/73—Complaint filed
2. 10/29/73—Order For Defendants To Show Cause, Etc.
3. 12/3/73—Pretrial Memorandum And Order
4. 12/21/73—Defendants Answer to Complaint
5. 5/6/74—Order Designating Members Of Three Judge Court
6. 12/19/74—Opinion of J. Toledo and J. Coffin
7. 12/19/74—Dissenting Opinion of J. Pesquera
8. 12/19/74—Judge Entered
9. 1/22/75—Defendants Notice of Appeal

II. Sergio Pérez Nogueiro v. Board of Examiners, Etc. Civil No. 74-520

1. 5/6/74—Complaint Filed
2. 5/22/74—Order To Show Cause
3. 11/14/74—Order Designating Three Judge Court
4. 12/9/74—Motion To Amend Complaint Granted 12/13/74
5. 2/5/75—Memorandum And Order
6. 2/5/75—Judgment Entered
7. 3/10/75—Notice of Appeal

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CIVIL ACTION No. 917-73

MARIA C. FLORES, *Plaintiff*

v.

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, composed of its members, Pedro Santiago Rivera, Leonel A. Fernández, Genaro Negrón, Juan M. Portela Soler, Guillermo Cruz González, and Milton Castro Nazario,

Defendants

COMPLAINT

(Filed October 15, 1973)

Comes now the plaintiff through the undersigned attorney and respectfully states, alleges and prays as follows:

1. The action arises under the Fifth or Fourteenth Amendment to the Constitution of the United States, under 42 U.S.C. 1981, 42 U.S.C. 1983, and 28 U.S.C. 1343 (3) and (4).

2. The plaintiff is a native of Mexico, not a citizen of the United States, but a legal resident of Puerto Rico. She is by profession a civil engineer.

3. The defendants are the present member of, and compose, the Examining Board of Engineers, Architects and Surveyors of Puerto Rico.

4. The plaintiff applied on June 12, 1972, under the provisions of Law Number 399 of May 10, 1951, as amended, for registration as a licensed engineer, for which she fulfills all the statutory requirements except that of United States citizenship.

5. On June 29, 1972, December 20, 1972, and again most recently on September 19, 1972, the defendant denied plaintiff's application, because she did not meet the citizenship requirement of Section 689, Title 20, Laws of Puerto Rico Annotated.

WHEREFORE, plaintiff prays that this Court:

1. Take jurisdiction of this case and certify, in view of the substantial constitutional nature of the questions raised in the complaint, the necessity for convening a statutory district court of three judges, and that such court be duly and speedily convened to hear and determine the case as provided by law, pursuant to 28 U.S.C. 2281 and 2284, and

2. Adjudge and decree the requirement of United States citizenship contained in 20 L.P.R.A. 689, as amended, unconstitutional on its face because of its operation, enforcement and application as to plaintiff on the following grounds:

(a) It is in conflict with the due process clause in that it amounts to an arbitrary and unreasonable requirement devoid of any rational and justifiable relationship between citizenship and ability and qualifications, and deprives plaintiff of her right to earn a livelihood.

(b) It is repugnant to the equal protection clause in that it arbitrarily and unreasonably establishes an inherently suspect classification based on nationality which has no basis in any compelling state interest, and

3. If the pertinent portion of the statute is ruled unconstitutional, issue a mandatory injunction directed to defendants or their successors in office, compelling them to register plaintiff as a licensed engineer.

San Juan, Puerto Rico, this 15 day of October, 1973.

/s/ MAX RAMIREZ DE ARELLANO
Max Ramirez De Arellano
Boringuen Avenue 267
Santurce, Puerto Rico 00915
722-2322
Attorney for Plaintiff

(Caption Omitted in Printing)

ANSWER TO COMPLAINT

(Filed December 21, 1973)

To the Honorable Court:

Comes now defendants through the undersigned attorneys and respectfully allege and pray as follows:

1. Defendants deny the assertions set forth at paragraph number one (1) of the complaint.

2. Of the allegation at paragraph number two (2) it is admitted that plaintiff is not a citizen of the United States of America and a civil engineer by profession.

3. Allegations at paragraph number three (3) of the complaint are admitted.

4. Of allegations at paragraph number four (4) of the complaint it is admitted that by letter dated September 19, 1973, defendant Board notified plaintiff of the denial of her application for license as a certified engineer until proof of U.S. citizenship was furnished by her.

Affirmative Defenses

1. This Honorable Court, lacks jurisdiction to entertain the complaint and grant the relief sought by plaintiff.

2. Defendants' action in processing plaintiff's application for license as a certified engineer constitute the lawful discharge of governmental functions in accordance with the applicable laws of the Commonwealth of Puerto Rico.

3. In discharging their duties defendants were acting lawfully and in good faith not in violation of plaintiff's constitutional rights.

4. The provisions contained in Section 689 of Title 20 of the Laws of Puerto Rico Annotated are not in conflict, nor do they contravene the rights secured under the Fifth and Fourteenth Amendments to the Constitution of the United States.

5. The requirements of Section 689 of Title 20 of the Laws of Puerto Rico Annotated do not violate any of this rights and protections guaranteed to plaintiff by the Constitution of the United States of America.

6. Plaintiff has not been denied or deprived of her right to earn a livelihood.

7. The provisions of Section 689 of Title 20 of the Laws of Puerto Rico Annotated are not repugnant to the Constitution of the United States of America and constitute the expression of a reasonable, valid and legitimate compelling state interest.

8. The practice of professions such as plaintiff's is authorized under the terms and conditions determined by the laws of the Commonwealth of Puerto Rico.

9. Plaintiff has an adequate remedy at law which can be pursued in the courts of the Commonwealth of Puerto Rico.

10. Plaintiff has not exhausted the local remedies available to her.

11. This Court should abstain from assuming jurisdiction in this case and allow the Courts of the Commonwealth of Puerto Rico the opportunity to pass upon the issues raised by plaintiff.

San Juan, Puerto Rico, December 21, 1973.

Francisco De Jesus Schuck
Attorney General

R. Adolfo De Castro
Assistant Attorney General

Nellie Ortiz Torres
Director General
Litigation Division

By: /s/ Jaime A. Rodriguez Lecoeur
Jaime A. Rodriguez Lecoeur
Attorney, Department
of Justice

(Certificate omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CIVIL No. 74-520

SERGIO PEREZ NOGUEIRO,

Plaintiff,

v.

BOARD OF EXAMINERS OF ENGINEERING, ARCHITECTS AND SURVEYORS OF PUERTO RICO,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

(Filed May 6, 1974)

TO THE HONORABLE COURT:

NOW COMES THE PLAINTIFF by his undersigned counsel and respectfully alleges and prays:

I

This cause is based on the following constitutional, treaty and statutory provisions of the United States:

1. Due Process and Equal Protection Clauses of the Fifth or Fourteenth Amendments to the Constitution of the United States.
2. Supremacy Clause of the United States Constitution, (Article VI, Section 2).[1]
3. Articles 55c and 56 of the United Nations Charter.[2]
4. 42 U.S.C.A. 1981.[3]
5. 42 U.S.C.A. 1983.[4]
6. 28 U.S.C.A. 1343 (3) and (4).[5]
7. 28 U.S.C.A. 2281 and 2284.

Plaintiff herein is a native of Spain. Although not a citizen of the United States, he is a legal resident of the

(Footnotes on pages 13 and 14.)

Commonwealth of Puerto Rico by or under the authority of the Immigration and Naturalization laws of the United States pursuant to his alien registration No. A-19 687 197. He is a qualified civil engineer who in 1965 obtained his degree in La Gran Colombia University, Bogotá, Colombia, where he also achieved a bachelor degree in the Science of Education and Mathematics and in the Science of Education and Physiochemistry. Previously, in 1955, he had graduated from the Normal Teachers School of Lugo, Spain, obtaining the degree of National Teacher, and in 1956, at Madrid's Central University, he took courses leading to a bachelor degree in Physical Sciences.

In 1971, at the University of Puerto Rico, plaintiff took and approved courses leading to a master degree in Administration and Curriculum, and in 1973 he received his master degree in Planning, specialized in Urban Planning. Moreover, at the University of Puerto Rico he took and passed various continuous educations courses, among them Road Planning and Construction employing PERT-CPM computer methods. He also took and passed the Introduction to Third Generation IBM (SYS/70) Machines course, employing FORTRAN IV language programming.

Besides his training and academic achievements, plaintiff is an experienced civil engineer who designed and built the new installations of the ARTE-ACERO factory owned and operated by his brother in Suba, Bogotá, Colombia. In 1972, as a bachelor in engineering he worked for the Bureau of Engineering Programming of the Highways Authority of the Commonwealth of Puerto Rico as a consultant on the use of the ICES-Rods, Pert-Cpm system employing computers. In 1971 plaintiff worked as a civil engineer, part-time for Dinos & Vafi, Consulting Engineers, in highways design and structural estimates of building and bridges. In 1970 he worked for contractor Florentino Alvarez as a working partner making estimates for jobs bid on, such as the Institute of Culture, Casa Blanca and Arsenal restora-

tions, as well as the Cathedral of San Juan, Puerto Rico. Earlier, in Bogotá, Colombia, around mid-1970 he operated as contracting engineer, having designed, structurally estimated, budgeted and built a six-story building in Bogotá. From early to mid-1968 he worked as a sanitary engineer for the Bureau of Public Health of the Bogotá Special District in charge of pollution and environmental health. All of the foregoing in addition to initial experience right after graduation in Colombia.

Plaintiff is at present in the employ of the public Works Department of the Municipality of Carolina, Puerto Rico, pursuant to a limited and restrictive authorization issued by defendant Board of Examiners of Engineers, Architects and Surveyors of Puerto Rico after he approved the written examination (validation) required by law. Said certification reads:

"COMMONWEALTH OF PUERTO RICO
"PUERTO RICO BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS
"BOX 3271, SAN JUAN, PUERTO RICO
"CERTIFICATION 50

"I, JUSTINO VALLES, Administrative Officer of the Puerto Rico Board of Examiners of Engineers, Architects and Surveyors, HEREBY CERTIFY, that SERGIO PEREZ NOGUEIRO approved a written examination in accordance with Act 399 of May 10, 1951 as amended by Acts 119 of June 29, 1964 and 121 of June 8, 1967. That the approval of this examination grants him the right to practice ENGINEERING solely and exclusively as an employee of Agencies and instrumentalities of the Commonwealth of Puerto Rico, Municipal Governments and Public Corporations.

"I, FURTHER CERTIFY: That the limitation imposed on MR. SERGIO PEREZ NOGUEIRO right to practice *Engineering* are those required by acts 119 of June 29, 1904 and 121 of June 8, 1967, because of his citizenship. Mr. SERGIO PEREZ NOGUEIRO is entitled to be automatically registered as an ENGINEER without limitations as soon as he presents the Naturalization Certificate as American Citizen.

"IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Puerto Rico Board of Examiners of Engineers, Architects and Surveyors, at the City of San Juan, this 2nd day of March, nineteen hundred and seventy three.

/s/ JUSTINO VALLES
Justino Valles
Administrative Officer."

III

Defendant Board of Examiners of Engineers, Architects and Surveyors is entrusted with the enforcement, application and administration of Acts 119 of June 29, 1904, as amended by Acts 399 of May 10, 1951, 119 of June 29, 1964 and 121 of June 8, 1967, Title 20, Sections 681-710, L.P.R.A,. regulation and licensing the practice of engineering, architecture and surveying in the Commonwealth of Puerto Rico.

Section 689 (3)(a), Title 20, L.P.R.A., in its relevant part to this action, provides as follows:

"§ 689. Qualifications for registration in the Board's registry

"In addition to what has already been provided in this section, it shall be required that applicants for registration in the Board's registry *be citizens of the United States of America and reside in the Commonwealth of Puerto Rico for not less than one year before their applications.* Provided, that the requisite of being a citizen of the United States of America shall not apply to engineers, architects and surveyors who have studied the total courses and have received their corresponding grade or certificate in the Commonwealth of Puerto Rico, provided that the approved course of study and institution where he has studied fulfill the qualifications fixed by sections 681-710 of this title, as the case may be; Provided, That the appli-

cants shall meet all the qualifications fixed by this act for registration in the Board's registry."

• • •

WHEREFORE, plaintiff respectfully prays this Honorable Court to:

1. Take jurisdiction of this case and certify, in view of the substantial constitutional nature of the questions raised in this complaint, the necessity for convening a statutory three-judge District Court, and that such Court be duly and speedily convened to hear and determine this case as provided by law, pursuant to Title 28 of the United States Code, Sections 2281 and 2284, although plaintiff respectfully avers that relying on the overwhelming U.S. Supreme Court jurisprudence in *Graham* v. *Richardson,* 403 U.S. 365 (1971) *Dougall* v. *Sugarman,* 93 S.Ct. 2861 (1973); and *In re Griffiths,* 93 S.Ct. 2851 (1973), as well as this Court's ruling in *Santin Arias* v. *Examining Board of Refrigeration and Air Condition Technicians,* 353 F. Supp. 857, 860-62 (1972), this action can be disposed of by this Honorable Court without convening the three-judge panel.

2. Adjudge and decree subsection (3)(a) of Section 689, Title 20, L.P.R.A., unconstitutional on its face because its operation, enforcement and application as to plaintiff is null and void on the following grounds:

A

Subsection (3)(a) of Section 689, Title 20, L.P.R.A. is repugnant to the Due Process Clause of the Fifth or Fourteenth Amendments to the Constitution of the United States because conditioning the licensing of engineers, architects and surveyors to United States citizenship, or in any manner limiting or restricting the licensing and practice of said professions, as in plaintiff's case, solely on the basis of citizenship constitutes an arbitrary and unreasonable requirement devoid of any rational and justifiable re-

lationship between citizenship and the ability, qualifications and experience to engage in the same. Furthermore, such citizenship requirement arbitrarily and unreasonably deprives plaintiff of his right to unrestrictedly earn his livelihood as guaranteed by the aforesaid Due Process clauses, besides subjecting him to involuntary servitude solely as an employee of agencies and instrumentalities of the Commonwealth of Puerto Rico, Municipal Governments and Public Corporations, as explicitly provided by *Certification 50, supra,* in violation of the 13th Amendment to the Constitution.

B

Section 689(3)(a), Title 20, L.P.R.A., is in conflict with the Equal Protection Clause of the Fifth or Fourteenth Amendments to the Federal Constitution in that it arbitrarily and unreasonably establishes an inherently suspect classification based on nationality or alienage unsupported by any compelling state interest to justify such classification and which, as applied to plaintiff herein, who is otherwise qualified to enter defendant Board's registry of engineers, deprives him of the free, unfettered and unrestricted practice of his chosen profession.

C

Section 689(3)(a), Title 20, L.P.R.A. is in conflict with the Supremacy Clause of the Constitution of the United States (Article VI, Section 2) because it interferes and is hostile to the exclusive powers of Congress to admit or exclude aliens, and with the international obligations undertaken by Congress with foreign nations. Moreover, it runs contrary to the rights accorded by Congress to aliens under 42 U.S.C.A. 1981, 42 U.S.C.A. 1983 and 28 U.S.C.A. 1343(3) and (4).

3. In the event Section 689(3)(a), Title 20, L.P.R.A. is ruled unconstitutional, plaintiff finally prays this Court

to issue a mandatory injunction or any other relief it may deem just and proper to compel defendant Board of Examiners of Engineers, Architects and Surveyors to enter plaintiff's name on its register of engineers and issue to him a certificate or license without any restrictions or limitations whatsoever authorizing him to practice his profession in the Commonwealth of Puerto Rico as he may choose, either in private enterprise or with government agencies and instrumentalities.

4. Issue an order for defendant Board to show cause why the relief sought should not be granted by this Court. Defendant Board shall be served of this process by the U.S. Marshal through its Administrative Officer, Mr. Justino Valles, at its address, 261 Tanca Street, Fifth Floor, San Juan, Puerto Rico.

San Juan, Puerto Rico, this 6 day of May, 1974.

Respectfully submitted,

SANTOS P. AMADEO
JOSE ENRIQUE AMADEO
Counsel for Plaintiff

By: /s/ SANTOS P. AMADEO
Santos P. Amadeo
P. O. Box 21883 University Station
Río Piedras, Puerto Rico 00931

FOOTNOTES

[1] Page 1. Article VI, Section (Supremacy Clause) of the Federal Constitution provides:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

[2] Page 1. Article 55c of the United Nations Charter provides:

> "Article 55
>
> "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, the United Nations shall promote:
>
> • • • • • • • • • •
>
> "c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Article 56 of the United Nations Charter provides:

> "All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

[3] Page 1. 42 U.S.C.A. 1981 provides:

> "Equal rights under the law
>
> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

[4] Page 1. 42 U.S.C.A. provides:

"Civil actions for deprivation of rights

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

[5] Page 1. 28 U.S.C.A. 1343(3) and (4) provides:

"Civil rights and elective franchise

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

• • • • • • • • • •

"(3)To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all person within the jurisdiction of the United States;

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

(Caption Omitted in Printing)

MOTION TO AMEND COMPLAINT

(Filed December 9, 1974)

To The Honorable Court:

Comes Now the plaintiff through the undersigned Counsel, and respectfully alleges and prays:

1.—That in plaintiff's Complaint filed before this Court on May 6, 1974 appears as party-defendant the Board of Engineers, Architects and Surveyors of Puerto Rico.

2.—That the plaintiffs wishes to incorporate as party-defendant, not only the Board above mentioned, but also the Members of Such Board, which is composed of the following persons:

1.—Leonel Fernández, President.

2.—Genaro Negrón,

3.—Guillero Cruz González,

4.—Víctor Labión,

5.—Pedro Santiago Rivera,

6.—Milton Castro, and

7.—Juan M. Portela, *as Members,* all of whom were summoned with copies of the Complaint by the United States Marshal, through Mr. Justino Valles, Administrative Officer of the Board.

Respectfully Submitted, this 6th day of December, 1974.

Dr. Santos P. Amadeo
Jose Enrique Amadeo

By: /s/ Santos P. Amadeo
Dr. Santos P. Amadeo
Counsel for Plaintiff Sergio Pérez Nogueiro
P. O. Box 21883 University Station
Río Piedras, Puerto Rico 00931

(Certificate Omitted in Printing)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1267

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, etc., *Appellants*

v.

MARIA C. FLORES DE OTERO, *Appellee*

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS, AND THE MEMBERS OF SUCH BOARD, *Appellants*

v.

SERGIO PEREZ NOGUERIO, *Appellee*

On Appeal from the United States District Court for the District of Puerto Rico

MOTION TO AFFIRM

MAX RAMIREZ DE ARELLANO
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Santurce, Puerto Rico

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

ARGUMENT

The appellants are appealing to this Court from the judgments entered by the District Court in these cases, whereby Section 689 of Title 20, L.P.R.A., is declared unconstitutional insofar as it requires United States citizenship of candidates for licensure as engineers, architects and surveyors. *In Re Griffiths,* 413 U.S. 717.

Appellants ostensibly present three questions as substantial and meriting the attention of this Court. However, the questions presented by Appellants actually come down to one: Is the Commonwealth of Puerto Rico to be exempted from the application of the fundamental rights guaranteed by the Constitution[1] of the United States, and effectuated by the Civil Rights Acts?

It is the contention of Appellees in these cases that this question should be answered in the negative.

I. THE COMMONWEALTH OF PUERTO RICO IS A "STATE OR TERRITORY" UNDER 42 U.S.C. 1983

As stated by Appellants in their Jurisdictional Statement, the jurisdiction of the District Court over the present action under 28 U.S.C. 1343 depends on the applicability of 42 U.S.C. 1983, the Civil Rights Act of 1871, to the Commonwealth of Puerto Rico.

Appellants rely mainly on this Court's decision in *District of Columbia* v. *Carter,* 40 U.S. 418, for their contention that Puerto Rico is not a "State or Territory" within the meaning of the Act. However, the

[1] It has been held unnecessary to determine which of either the Fifth or the Fourteenth Amendments applies to Puerto Rico, *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663.

question, under the reasoning of *Carter,* is not, as alleged by Appellants, whether "the evils which [section 1983] sought to correct were . . . present in Puerto Rico", (Jurisdictional Statement, p. 9), but rather whether the power of Congress to effectuate the policies of the Constitution of the United States extends directly to acts of a local nature by officials of the government of Puerto Rico. In *Carter* this Court found that, since under Article I, Section 8, Congress has direct control over acts of officials of the District of Columbia, the District was *sui generis* within the constitutional scheme. Conversely, where, as in Puerto Rico, there is no such direct control, Congress exercises its authority through the various civil rights acts.

The present case is but the latest in a long series of actions brought in the Puerto Rico District Court under 42 U.S.C. 1983, and the question of the statute's applicability is not a new one. In *Marín* v. *University of Puerto Rico,* 377 F. Supp. 613 (D.C.P.R. 1974), two Puerto Rican judges sitting as members of a three-judge district court, together with a non-Puerto Rican judge of the Court of Appeals, specifically rejected the contention that they had no jurisdiction under 42 U.S.C. 1983. The University, also relying on *Carter,* had moved for dismissal of the case. The District Court, 377 F. Supp. at p. 617, stated:

> It is clear to this Court that the rationale of affording a federal right in federal courts where local and distant officials might deny citizens their constitutional rights is as fully applicable to the Commonwealth of Puerto Rico as it is to the states of Virginia or California or to the Virgin Islands.

See also *Montalvo* v. *Colón,* 377 F. Supp. 1332; *El Mundo* v. *P. R. Newspaper Guild,* 346 F. Supp. 106;

Santiago v. *Torres Massa*, 342 F. Supp. 1152; *Vistamar, Inc.* v. *Vázquez*, 337 F. Supp. 375; *Glenwall Dev't.* v. *Schmidt*, 336 F. Supp. 1079.

Finally, if the District of Columbia is *sui generis* and therefore requires different treatment, it is because the District—as opposed to the Commonwealth of Puerto Rico—is a creature of the Constitution and not of Congress, and was given different treatment by the Constitution itself.[2] The purpose of the Act being to cover the widest possible geographical scope, Puerto Rico must fall under the blanket term "State or Territory." *Marín*, supra, 377 F. Supp. at p. 629 (on rehearing). It is not a matter of subjecting "all the local statutes and actions to the strict supervisory powers of the federal courts" (Jurisdictional Statement, p. 11), but rather whether the Commonwealth of Puerto Rico is to be given a free hand where basic civil constitutional rights are involved. Appellants' contention to that effect is not sustained by the cases. To use this Court's language in *Calero-Toledo, supra,* subjecting enactments of the Commonwealth of Puerto Rico to the standards of the Constitution and the Civil Rights Acts serves, and does not expand, the purposes thereof.

[2] Interestingly, the dissenting opinion in *Rodrigues Cintrón* v. *Richardson*, Civil No. 1099-72, (D.C.P.R., April 7, 1975), stated that "Puerto Rico's singular status makes analogy to the District of Columbia unpersuasive." In that case, a three-judge district court found the definition of the term United States as defined in Section 228(e), Title II of the Social Security Act, 42 U.S.C. 428 (the so-called Prouty Amendment to the Tax Adjustment Act of 1966) unconstitutional.

II. THE DISTRICT COURT PROPERLY DECLINED TO ABSTAIN

A. As a General Rule, Abstention Is Inappropriate in Civil Rights Cases

Appellees need not belabor the fact that abstention is the exception rather than the rule, *Zwickler* v. *Koota*, 389 U.S. 31 (1962), particularly in Civil Rights cases, *Bailey* v. *Patterson*, 369 U.S. 31 (1962); *Marín* v. *University of Puerto Rico*, 346 F. Supp. 470 (D.C.P.R., 1972).

B. The Present Case Was a Proper One for Federal Adjudication

Appellants strongly rely on this Court's recent decision in *Harris County Commissioners Court, et al* v. *Moore*, No. 73-1475 43 L.W.4222 (February 18, 1975), for their contention that the District Court should have abstained in this case. They argue that, as in *Moore*, there is an unsettled relationship between the Commonwealth Constitution and the statute involved in this case, and that, therefore, supposedly because *Moore* "expanded the abstention doctrine" (Jurisdictional Statement, p. 13), the District Court should have permitted the Supreme Court of Puerto Rico to rule on the constitutionality of the statute under the local Constitution.

However, Appellants' basic premise—that the abstention doctrine was "expanded" by *Moore*—is unfounded. This Court explicitly found in *Moore* that the Texas statute was subject to definition by the Texas Courts, and that such definition might define the "nature and continued validity of the federal constitutional claim." *Moore, supra,* text at note 8. See also

Indiana Real Estate Commission v. *Satoskar,* 417 U.S. 938.

Further, this Court, by citing *Wisconsin* v. *Constantineau,* 400 U.S. 433 (1971), at least by implication refused to amplify the abstention doctrine in the manner suggested by Appellants. Appellees submit that in the present case there is no "integrated scheme of related constitutional provisions, statutes and regulations" calling as a whole "for clarifying interpretation by the state courts." On the contrary, the Puerto Rico Supreme Court clearly would have but two choices: either the citizenship requirement is invalid or it is not.[3] In either case, there is no reason why the federal courts should hold their hand in this case; there is nothing vague or ambiguous about the citizenship requirement which might make it susceptible of definition or interpretation. *Arias* v. *Examining Board,* 353 F. Supp. 857 (D.C.P.R. 1972); we are not dealing with "a rather vague Puerto Rican law . . .", *Fornaris* v. *Ridge Tool Co.,* 400 U.S. at 43; *England* v. *Medical Examiners,* 375 U.S. 411.

Finally, Appellees state that this Court has used a more liberal test in the case of Puerto Rico, in favor of local construction of its laws (Jurisdictional Statement, p. 13), and cite *Fornaris, supra* and *Wackenhut Corp.* v. *Aponte,* 386 U.S. 268, as authority for their contention. Assuming *arguendo* that those cases do stand for that proposition, they are clearly distinguishable from the present cases in that in the latter the Appellants are invoking certain basic civil rights guaranteed them by the Constitution.

[3] On February 8, 1974, the Supreme Court of Puerto Rico amended its rule governing admission to the Bar, eliminating the requirement of United States citizenship.

III. ON THE MERITS, THE STATUTE IS IN VIOLATION OF THE CONSTITUTIONAL STANDARDS

At the outset, it should be stressed that we are dealing with a totally illogical statute, insofar as its citizenship requirement is concerned. The crux of Appellants' justification for requiring United States citizenship of prospective engineers is the alleged policy of protection of the public against transient professionals who cannot be held responsible for their negligence. However, the statute permits aliens who have completed their training in Puerto Rico to receive unconditional licenses, yet no tie to Puerto Rico other than an alleged "interest" in remaining in Puetro Rico has been advanced by Appellants as evidence of their permanence. Again, the statute grants the same privilege to United States citizens recipients of professional degrees from accredited stateside schools who, of course, are just as mobile as aliens. As stated by the District Court, "There is no demonstrated relationship between citizenship and the likelihood that an individual will meet [his obligation under the Puerto Rico Civil Code provision, cited by Appellants, regarding responsibility of contractors for their negligence]." Ap. 3a, Jurisdictional Statement. Finally, the statute permits the Commonwealth government to hire engineers for government work in responsible positions whose only disqualification for a full license is the fact that they are aliens. Thus, even applying the "rational basis" test put forward by Appellants, the statute fails.

Appellants also attempt to justify the requirement by advancing an interest in controlling "the negative effects of an uncontrolled influx of aliens into professions which can be legitimately regulated by the State." (Jurisdictional Statement, p. 17). The fact is that

there is no such "uncontrolled" influx; entry into the professions is subject to passing the examinations and meeting all the other requirements of the statute including having four years' experience and, in the case of schools not formally recognized by the Board as accredited, an investigation into the course of studies undertaken by the applicant. 20 L.P.R.A. 689(2)(a).

CONCLUSION

> "The bosom of America is open to receive not only the opulent and respectable stranger but the oppressed and persecuted of all nations and religions; whom we shall wellcome to a participation of all our rights and privileges, if by decency and propriety of conduct they appear to merit the enjoyment". George Washington (1783), as quoted in 20 Chi.L.R. 547 (1953).

The judgment of the District Court should be affirmed, as the questions presented by Appellants are insubstantial.

San Juan, Puerto Rico, this — day of May, 1975.

MAX RAMIREZ DE ARELLANO
Attorney for María C. Flores de Otero

SANTOS P. AMADEO
Attorney for Sergio Pérez Nogueiro

Avenida Borinquen 2067
Santurce, Puerto Rico

Supreme Court, U. S.
FILED
JUL 25 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1267

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, COMPOSED OF ITS MEMBERS PEDRO SANTIAGO RIVERA, LEONEL A. FERNANDEZ, GENARO NEGRON, JUAN M. PORTELO SOLER, GUILLERMO CRUZ AND MILTON CASTRO NAZARIO, *Appellants*

v.

MARIA C. FLORES DE OTERO, *Appellee*

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS, AND THE MEMBERS OF SUCH BOARD, *Appellants*

v.

SERGIO PEREZ NOGUEIRO, *Appellee*

On Appeal from the United States District Court for the District of Puerto Rico

BRIEF OF APPELLANTS

MIRIAM NAVEIRA DE RODON
Solicitor General

PETER ORTIZ
Deputy Solicitor General

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1267

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, COMPOSED OF ITS MEMBERS PEDRO SANTIAGO RIVERA, LEONEL A. FERNANDEZ, GENARO NEGRON, JUAN M. PORTELO SOLER, GUILLERMO CRUZ AND MILTON CASTRO NAZARIO, *Appellants*

v.

MARIA C. FLORES DE OTERO, *Appellee*

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS, AND THE MEMBERS OF SUCH BOARD, *Appellants*

v.

SERGIO PEREZ NOGUEIRO, *Appellee*

On Appeal from the United States District Court for the District of Puerto Rico

BRIEF OF APPELLANTS

TO THE HONORABLE COURT:

OPINION BELOW

The Opinions of the District Court for the District of Puerto Rico are not yet reported. Copies of the Opinions and Orders are printed as Appendixes A

and B of the Jurisdictional Statement (Pages 1a to 7a of App.).

JURISDICTION

These suits were brought pursuant to 28 USC 1343 based upon causes of action under 42 USC 1983. Three Judge Courts were requested to enjoin the enforcement of section 689 of Title 20 of the Laws of Puerto Rico Annotated in that the citizenship requirement to practice engineering and related professions in the Commonwealth was unconstitutional. (See complaints, Appendix pages 2 and 3). The judgments of the District Court were entered on December 19, 1974 and February 5, 1975 and we filed our Notices of Appeal on January 22, 1975 and March 10, 1975 respectively. The jurisdiction of this Court over these appeals is conferred by 28 USC 1253 and 28 USC 2101(b). See *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 US 663, reh. den. 417 US 977; *M.T.M., Inc.* v. *Baxley, etc.*, 416 U.S. 663, 43 L.Ed. 2d 636. Probable jurisdiction was noted by this Court on May 27, 1975.

QUESTIONS PRESENTED

1. Whether the District Court Had Jurisdiction Over These Complaints Pursuant to Title 28, United States Code, Section 1343(3)(4).

2. Whether the District Court Should Have Abstained From Passing Upon the Interpretation and Validity of the Statute Involved.

3. (a) Whether the Strict Tests of Judicial Scrutiny Regarding 'State' Classifications of Aliens is Fully Applicable to Statutes Enacted By Commonwealth Legislature, or

(b) If They are Applicable, Whether the Statute Herein Complies With the Criteria Set Forth In In Re Griffiths, 413 U.S. 717, 93 S.Ct. 2851, 37 L.ed. 2d 910 (1973).

STATUTES INVOLVED

The local statute can be found as Appendix E of the Jurisdictional Statement and is officially reported on 20 LPRA 689, pages 226 to 228 of the 1973 Supplement to Volume 4A of the Laws of Puerto Rico Annotated.

STATEMENT

María C. Flores de Otero is a native of Mexico, not a citizen of the United States and resides in Puerto Rico. Her applications for registration as a licensed engineer were denied on the basis of her lack of United States citizenship. She brought an action in the United States District Court for the District of Puerto Rico seeking that section 689 be adjudged unconstitutional for being in conflict with the due process and equal protection clauses. The complaint did not specify which Amendment, the Fifth or Fourteenth of the United States Constitution is applicable. She also sought injunctive relief. A Three-Judge Court was convened and it entered judgment in her favor.

Sergio Pérez Nogueiro is a native of Spain who is residing as an alien in Puerto Rico. He is presently working as an engineer for the Municipality of Carolina pursuant to a conditional license granted by the Board, as authorized by the statute. He brought this action seeking a full unconditioned license to practice as an engineer in the Commonwealth. Judgment was entered in his favor, on the basis of the prior judgment in the María C. Flores de Otero case.

Section 689 provides that in addition to the educational and experience requirements, it shall be required that applicants for registration be citizens of the United States of America and reside in the Commonwealth of Puerto Rico for no less than a year before filing of their applications. It further provides that the citizenship requirement shall not apply to applicants who have studied the total courses and have received their grade or certificate in the Commonwealth. The citizenship requirement does not apply to applicants whom the agencies and instrumentalities of the Commonwealth Government, its municipalities and public corporations employ or wish to employ. These aliens are granted a conditional certificate to practice their professions in those public entities.

In its opinion the District Court found jurisdiction upon 42 U.S.C. 1983 and 28 U.S.C. 1343. It refused to abstain and wait for an interpretation by the Commonwealth courts because in its view the citizenship requirement is clear and unmistakable and no conceivable gloss placed upon it by the local courts could turn aside the argument that the classification is unconstitutional. The Court cited in support of its conclusion, *Zwickler* v. *Koota,* 389 U.S. 241, 248-50 (1967), and *Arias* v. *Examining Board of Refrigeration and Air Cond. Technicians,* 353 F. Supp. 857 (D.P.R. 1972).

On the merits, the District Court applied the strict test used by this Honorable Court in *In Re Griffiths,* 413 U.S. 717, 37 L.Ed. 2d 910, 93 S.Ct. 2851 (1973), which held that a State classification based upon alienage is suspect even if used to regulate entry to a profession, and the State has to show a compelling interest which is both constitutional, permissible and substantial and that the classification is necessary to achieve

the purpose or safeguard its compelling interest. By using such a strict test, the Court found that the interest invoked by the Commonwealth did not justify the classification. It rejected the argument that the Commonwealth had to protect itself against an uncontrollable invasion of alien engineers. It also held that the classification had no reasonable relationship with Article 1483 of the Civil Code, 31 L.P.R.A. 4124.[1] Said article imposes liability upon contractors for damages caused by them within ten years of the construction of the building work, etc.

The Court also rejected the contention that this Court had repudiated its holding in *In Re Griffiths, supra,* and similar cases, when it decided *Espinosa* v. *Farah Manufacturing Co.,* 414 U.S. 86, 38 L.Ed.2d 287, 94 S.Ct. 334 (1973).

Thus the decisions declared the statute invalid; enjoined appellants from enforcing it and ordered them to grant unconditioned licenses to appellees.

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[1] Said Article reads as follows:

"The contractor of a building which may have been destroyed by reason of defects in the construction shall be liable for the losses and damages if said building should collapse within ten years, to be counted from the completion of the construction; and during the same time the same liability shall be incurred by the architect who may have directed the work if the collapse is due to defects in the ground or in the direction.

If the cause should be the noncompliance of the contractor with the conditions of the contract, the action for indemnity may be brought within fifteen years".

ARGUMENT

POINT A: The District Court Erred in Holding That it had Jurisdiction Founded Upon 42 USC 1983 and 28 USC 1343.

The crux of our argument is the contention that Puerto Rico is not a "State or Territory" for the purposes of the Civil Rights Statutes herein invoked. It should be made crystal clear at the outset that we are only objecting to the assumption of jurisdiction by the federal courts under these statutes. We are not here concerned with the general jurisdiction of the local District Court under statutes such as 28 U.S.C. 1331, 1332 and 2254. We are not in any manner or form advocating the abolishment of the Court itself. We repeat that our contention is strictly based upon the scope and intent of the Civil Rights Acts and their jurisdictional counterpart. We submit that Congress never intended, or at least did not intend to do so after 1952, to subject all the local statutes, rules, ordinances and official acts of the public officials of the Commonwealth to the strict supervisory powers of the lower federal courts. The main basis for our reasoning stems from the interpretation of these statutes made by this Hon. Court in cases such as *District of Columbia* v. *Carter,* 409 U.S. 418, reh. den. 410 U.S. 959 (1973). Although the Court of Appeals for First Circuit has rejected this contention in *Ortiz* v. *Hernández Colón,* 511 F.2d 1080 (1975), and *Amézquita* v. *Hernández Colón,* No. 74-1345 (Slip. Opinion of June 20, 1975), we submit that that Court and the District Court in *Marín* v. *U.P.R.,* 377 F. Supp. 613 (1973), misconstrued our contention or its reasoning. Without an extensive analysis those Courts assumed that the residents of Puerto Rico are in the same position as those citizens who reside in the 50 states. This is an obvious error. Puerto Ricans are not in parity with other United States citizens in respect to their

duties, obligations and rights. Perhaps the most evident of our differences is that we do not have the duty or right to vote in federal elections. See in this respect, *Sánchez* v. *U.S.,* 376 F. Supp. 239 (DPR 1974).

The need for a conclusive and clear decision of this matter is evident. During the last two or three years the local federal court has been flooded with a wide variety of cases which directly or indirectly pretend to affect and question local public polity decisions. A short summary of a few of the published opinions follows:

1. *Rivera* v. *Chapel,* 366 F. Supp. 691, 493 F.2d 1302 (1 CA 1974), questioning the price fixing powers of the local officials.
2. *Torres* v. *Delgado,* 510 F.2d 1182 (1 CA 1975) *Vélez* v. *Martínez,* 510 F.2d 605, jury provisions in criminal cases.
3. *Oppenheimer* v. *Méndez,* 388 F. Supp. 326; *González,* v. *González,* 385 F. Supp. 1226; *Gabriel* v. *Benítez,* 390 F. Supp. 988, *King* v. *Conservatory,* 378 F. Supp. 746; *Vargas* v. *Barceló,* 385 F. Supp. 879 (Personnel laws of Puerto Rico).
4. *Acevedo* v. *Colón,* 377 F. Supp. 1332—abortion sections of the local Penal Code.
5. *Arvelo* v. *Supreme Court,* 382 F. Supp. 510, *Pagán Hernández* v. *Supreme Court,* 385 F. Supp. 130, (Bar examination procedures).
6. *Ortiz* v. *Colón,* 385 F. Supp. 111,—statutes for selection of municipal assembly.
7. *Amézquita* v. *Colón,* 378 F. S. 737, state policy on the squatter problem.
8. *Peréz* v. *González,* 378 F. Supp., *Marín* v. *U.P.R.* 377 F. Supp. 613, *Vega* v. *Secretary,* 384 F. Supp. 674 (Student and professor regulations).

9. *Doctor's Hospital* v. *Silva,* 383 F. Supp. 736; *Keystone Collection* v. *Silva,* 388 F. Supp. 304 (Labor Laws of the Commonwealth).

10. *Oquendo* v. *Ramos-Ortiz,* 372 F. Supp. 79 (Injunction against pending criminal proceedings).

The above is just an illustrative list of the many cases which have been brought before the federal courts. There are many more published and unpublished which deal with a significant number of local statutes and actions by local officers. They are not herein cited for any precedential value. But they do have two important aspects in common. Although plaintiffs in all these cases tried to invoke a federal question, and the court so found in some of them, they uniformly dealt with statutes or actions which were purely local in their nature and application. That is, they only affected purely internal matters. The other common trait was that none of them presented questions of violations on account of race, religious belief or creed, or political philosophy or preference of plaintiffs therein, which were the main concerns of the civil rights statutes.

Thus there is a legitimate concern within the legal, political, professional and business circles of the Commonwealth of Puerto Rico as to the applicability of the civil rights statutes over purely local, internal matters.

We submit that an unqualified holding that the Commonwealth is a "State or Territory" for the purposes of 28 USC 1343 and USC 1983, would seriously undermine the Congressional intent of Law 600, 64 Stat. 319, 66 Stat. 327, note, 48 USC 731d, as later clearly expressed by the majority of the Puerto Rican people in the status plebiscite held in 1967 as well as the goals achieved by the Commonwealth in its search for further

autonomy in local matters.[2] This would be so because the local federal court would continue to be the arbiter of the validity of most of the local statutes, ordinances, regulations and official government actions. We submit that this role should be left to the Supreme Court of Puerto Rico and ultimately to this Hon. Court through its appellate powers under 28 USC 1258. The above would not, in any manner award less rights to the local residents. They would have full opportunities to seek redress for the deprivation of their federal and local constitutional rights through the local courts.

Entering into the merits of the jurisdictional question, we submit that the approach taken in previous decisions which have rejected the Commonwealth's position does not take into account the special status of the Commonwealth, the nature of the present relationship and the intent and scope of the civil rights statutes.

The most recent decision in *Ortiz* v. *Hernández Colón,* 511 F.2d 1080, reasoned as follows:

> "The citizens of the several states are permitted to seek redress in the federal courts for deprivation of their rights under color of state law without first seeking relief in the state courts. Monroe v. Pape, 1961, 365 U.S. 167, 183. We yield to no one in our regard for the Supreme Court of Puerto Rico, but at the same time, if citizens of the several states may call for an initial decision in the district court

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[2] For an excellent historical analysis of this search and the achievements attained see, *P.P.D.* v. *Ferré,* 98 P.R.R. 331 (1970) especially the opinions by Justices Santana Becerra and Rigau which are reported at pages 377-401, 421-437. See also generally as to the concept and meaning of the present Commonwealth status, *Pérez Aldarondo* v. *Superior Court,* (February 20, 1974) and *García Mercado* v. *Superior Court,* 99 P.R.R. 287. (We are attaching copies of their official translations of these opinions.) See specially the discussion in *García Mercado,* pages 294 et seq.

> without deferring to the courts of their local state, we must wonder how we could conscientiously hold that under 28 U.S.C. § 1343 United States citizens resident in Puerto Rico are any less entitled."

A similar approach was used in *Marin* v. *U.P.R.*, 377 F. Supp. 613 (D.P.R. 1973). We respectfully submit that the comparison with the citizens of the 50 states is ill founded. As we shall further elaborate, for the purposes of § 1343 the residents of Puerto Rico should be treated in the same manner as those residing in the District of Columbia. The latter are not in an inferior position in respect to the quest of redress for deprivations of their civil rights. Rather it is only a matter of the forum where the actions are to be brought. This is specially so if it is considered that there is nothing preventing state courts from entertaining and deciding civil rights actions brought under 42 USC 1983. *Brown* v. *Pitchess* (California Supreme Court, 2-19-75, 16 Cr. L. 2516). And the Commonwealth courts can enter injunctions for violations of civil rights. See Law No. 12 of August 8, 1974.

In *Calero-Toledo, supra,* 40 L.Ed.2d at 464, ft. 11, this Court expressed that:

> "We have no occasion to address the question whether Puerto Rico is a 'State' for purposes of 28 U.S.C. 1343 (28 USCS 1343), a jurisdictional basis of appellee's complaint."

It did not reach the question because jurisdiction was found to exist under 28 U.S.C. 1331. In this case the only jurisdictional basis is 28 U.S.C. 1343(3). This by itself establishes that this question is so substantial as to require plenary consideration, and a definite decision of the issue. Section 1343 came into being as part of the

Civil Rights Acts enacted during the late 1860's and early 1870's. It was one of the means established to award jurisdiction to the federal courts over actions against the State to redress deprivation of constitutional rights which were mostly uncontrolled after the Civil War. Together with the predecessor of 42 U.S.C. 1983, it was enacted to vindicate rights protected by the Fourteenth Amendment. For a historical view of 1343, see *Zwickler* v. *Koota,* 389 U.S. 241, 19 L.Ed.2d 444 (1967), 88 S.Ct. 391.

In this case jurisdiction under 1343 depends upon the applicability to the Commonwealth of Art. 1 of the Civil Rights Act, 42 U.S.C. 1983. *District of Columbia* v. *Carter,* 409 U.S. 418, 34 L.Ed.2d 613, 93 S.Ct. 602, reh. den. 410 U.S. 959, 35 L.Ed.2d 694, 93 S.Ct. 1411 (1973), held that the District of Columbia was not a "State or Territory" within the purposes of 42 U.S.C. 1983 and that the District Court lacked jurisdiction over a claim based upon that section. The Court made a complete historical analysis of the Civil Rights Acts and found that 1983 was enacted as a means to "enforce the provisions of the Fourteenth Amendment", *Carter, supra,* 34 L.Ed.2d at 619. Since the District is not a State within the meaning of the Fourteenth Amendment, neither the District nor its officers are subject to its restrictions. Thus this Court held that section 1983 is not applicable to the District. This was based upon an extensive examination of the legislative history of 1983 and the nature of the District of Columbia.

As to the legislative history of section 1983, there is no question that the evils which it sought to correct were ever present in Puerto Rico. On the contrary both before and after the birth of the Commonwealth in Puerto Rico, the local courts have had the power and

the willingness to protect and enforce federal rights. See *Mongil Suárez* v. *Administrador Deporte Hípico,* 354 F. Supp. 320 (DPR 1972); 4 L.P.R.A. 62. Note also that state courts can decide civil rights actions. *Brown* v. *Pitchess,* California Supreme Court, 2/19/75, 16 Cr. L. 2516.

Like the District, the Commonwealth is truly *sui generis* within the national governmental structure, *Carter, supra.* 34 L.Ed.2d at 625. It is significant that this Court has compared the nature of the District with that of the Commonwealth. *Palmore* v. *United States,* 411 U. S. 389, 36 L.Ed.2d 342, 93 S.Ct. 1670 (1973), where this Court recognized that the District of Columbia is constitutionally distinct from the States and following *Fornaris* v. *Ridge Tool Co.,* 400 U.S. 41, 27 L.Ed.2d 174, 91 S.Ct. 156 (1970), held that a statute of the District is not a State statute for the purposes of 28 U.S.C. 1257. The Court also held that the rationale of *Balzac* v. *Puerto Rico,* 258 U.S. 298, 66 L.Ed. 627, 42 S.Ct. 343 (1922), and that a Puerto Rican statute was a State statute for purposes of appeal was severely undermined in *Fornaris.* The situation herein is similar to the one present in *Fornaris* and *Palmore.* That is, sections 1983 and 1343 should not be held applicable to the Commonwealth in the absence of a more definitive guidance from Congress. *Palmore,* 36 L.Ed.2d, at page 351.

Although the source of congressional power over the District, (Art. 1, sec. 8, cl. 17 of the Constitution) is different than the one in Puerto Rico, both possess different traits than the States or Territories. The source of Congressional power over the Commonwealth is the compact between the United States and Puerto Rico (Public Law 600) *Calero-Toledo, supra.* Thus the

question as to whether a particular Congressional enactment is applicable to Puerto Rico has to be answered in terms of the Compact. That is, whether their applicability is consonant with the Compact. See *Caribtow Corp.* v. *Occupational Safety and Health Review Comm.,* 493 F.2d 1064 (1 CA, 1974); *N.L.R.B.* v. *Security National Life Ins. Co.,* 494 F.2d 336, *Hodgson* v. *Union Empleados de los Supermercados Pueblo,* 371 F. Supp. 56 (DPR 1974); *Liquilux Gas Services of Ponce, Inc.* v. *Tropical Gas Co.,* 303 F. Supp. 414 (DPR 1969) and cases cited therein. For a pre-Commonwealth decision refusing to apply the Civil Rights Acts to Puerto Rico, see *Insular Police Comm.* v. *López,* 160 F.2d 673—(1 CA 1947). And see, *Leibowitz,* the Applicability of Federal Law To The Commonwealth of Puerto Rico, 56 GEO. L. J. 219 (1967).

That same flexible approach has been used by this Court. Compare *Fornaris* v. *Ridge Tool Co., supra* (Puerto Rico not a State for the purposes of this Court's appellate powers, 28 U.S.C. (1257) and *Calero-Toledo, supra,* (Puerto Rico is a State for the purposes of the Three-Judge-Court Act, 28 U.S.C. 2281) In neither of these two cases did this Court find it necessary to express whether the Fifth or Fourteenth Amendment is applicable to Puerto Rico.

Thus the question of the applicability of the Civil Rights Statutes, depends upon an interpretation of the Compact and the pertinent statutes. This Court recognized in *Calero-Toledo* that the Compact had brought about significant changes in Puerto Rico's governmental structures, the main one being a much higher degree of autonomy and sovereignty over purely local matters. This novel political experiment strengthened the relationship between Puerto Rico and the Federal govern-

ment and has turned the Island into a highly unique and *sui generis* structure within the United States federal system. It would be inconsistent with the deference shown by Congress and this Court to Puerto Rico's government and with the changes of the political structure brought about by the Compact, to subject all the local statutes and actions to the strict supervisory powers of the federal courts as if we were a State or Territory.

While Puerto Rico possesses a higher degree of sovereignty than the District, Congress still possesses power to legislative over it, due to the provision of the Federal Relations Act, 48 U.S.C. 734, which continued in effect by virtue of the Compact.

Because Puerto Rico is not a "State" within the full meaning of that term; *Fornaris, supra; Sánchez* v. *U. S.*, 376 F. Supp. 239 (DPR 1974); *Mora* v. *Torres*, 113 F. Supp. 309, 319 (DPR 1953), or a Territory, within the constitutional context used in the *Carter* case; *Montalvo* v. *Colón*, 377 F. Supp. 1332, 1340[3] (DPR 1974), *Hodgson, supra*, neither the Civil Rights Act, 42 U.S.C. 1981, 1983 nor its jurisdictional counterpart, 28 U.S.C. 1343 are applicable to Puerto Rico.

POINT B: The District Court Should Have Abstained from Reaching the Merits of the Constitutional Claim

The Court below declined to abstain because the statute was clear and free from doubt. As this Court recently held, *Harris County Comm. Court, et al.* v. *Moore*, abstention is appropriate where the uncertain status of local law stems from the unsettled relation-

[3] See ft. 23 at 1341-42 for Judge Coffin's view on the applicability of constitutional safeguards to the Commonwealth which are consonant with the flexible approach urged by appellants.

ship between the state constitution and a statute. In the case at bar the relationship is two fold. First of all, appellants argued that the classification excluding aliens is justified by the provisions of Article 1483 of the Civil Code, which deals with causes of action against engineers, architects, etc. It is evident that there is a significant relationship between the two. But it is uncertain whether the exclusion is justified, under local law, by the Civil Code provisions. No pertinent decision by the local court exists which deals with the question whether the exclusion is necessary to give effect to the protections established by Article 1483. There is also a close relationship between the statute and the local Constitution. The local Court has not had the opportunity to analyze, in the context of this case, the scope of section 1 of Article I of our Constitution which establishes that "No discrimination shall be made on account of race, color, sex, birth, social origin or condition, or political or religious ideas."

The Supreme Court of Puerto Rico should have the opportunity of interpreting whether the statutory exclusion conflicts with this prohibition against discrimination due to birth or origin, together with the general clause as to equal protection of the laws. Article II, section 7 of the Constitution and whether it is justified by the Civil Code provision. As shown by *Moore, supra*, and *Reets* v. *Bozanich*, 397 U.S. 82, abstention is not only required when the statute needs interpretation as to its meaning. It is also mandated when the scope and validity of the statute is unclear under the local constitution and/or related statutes.

We submit that the *Moore* decision *supra*, has expanded the abstention doctrine in a manner favorable

to the States. This is more so in the case of Puerto Rico, where this Court has consistently used a far more liberal test in favor of the local construction of its laws. *Fornaris, supra, Wackenhut,* 386 US 268, cited with approval in *Calero-Toledo, supra.* In *Wackenhut, supra,* the District Court expressly held that:

> "'application of the doctrine of abstention is particularly appropriate in a case. . .involv(ing) the construction and validity of a statute of the Commonwealth of Puerto Rico. For a due regard for the statutes of the Commonwealth under its compact with the Congress of the United States dictates, we believe, that it should have the primary opportunity through its courts to determine the intended scope of its own legislation and to pass upon the validity of that legislation under it own constitution as well as under the Constitution of the United States."

This criteria was adopted with the specific holding that the special regard due to the Commonwealth warrants absention. If this reality is considered with the pre-Commonwealth respect and deference given by this Court to the local interpretations of the Civil Code and related statutes,[4] then the absention doctrine is even more appropriate.

In addition, abstention is more appropriate here because it would serve to avoid "the hazard of unsettling some delicate balance in the area of federal-state

[4] "Out of that experience grew a pronouncement that a Puerto Rican Court should not be overruled on its construction of local law unless it could be said to be 'inescapably wrong'. See *Bonet* v. *Texas Co.,* 308 U.S. 463, 471, 84 L. Ed. 401, 60 S. Ct. 349". *Fornaris* v. *Ridge Tool, supra,* 27 L. Ed. 2d at 177.

relationships"; Justice Harlan's concurrent opinion in *Zwickler* v. *Koota,* 389 U.S. 241, 19 L.Ed. 444, 454-55, 88 S.Ct. 391. Abstention in cases dealing with Commonwealth statutes clearly serves this purpose. It should be specially noted that an Ad Hoc Commission has been named to study the special relationship between Puerto Rico and the United States for the purpose of studying, of proposing legislation, and formulate recommendations tending to satisfy the aspirations of the people freely expressed in the 1967 plebiscite.[5]

In this particular case abstention is appropriate because the local ruling could avoid the necessity of passing upon the federal claim. If the statute is found unconstitutional, no further litigation is needed. On the other hand if a justification is found, then the only aspect remaining would be if the same meets the pertinent tests.

POINT C: The Court Erred in Applying the Compelling State Interest Test to the Commonwealth Statutes and/or it Erred in Rejecting the Justification Advanced by Appellants.

The District Court applied the strict test of compelling state interest following the holding in *In Re Griffiths* that classifications limiting aliens' rights and opportunities are suspect. While that test might be

[5] This Commission is a consequence of congressional action contained in Public Law 88-271 of February 20, 1964 and the action of the Legislature of Puerto Rico Law Number 9 of April 13, 1964. The present Joint Committee was appointed upon the request of the Government of Puerto Rico by the President of the United States and the Governor of Puerto Rico. Among the areas under study is the problem of aliens' entry into Puerto Rico.

appropriate in dealing with the 50 States,[6] both the general nature of the Commonwealth status and the specific factual situation in regards to the aliens' presence in Puerto Rico, warrant a different approach.

We have already extensively cited the cases which recognize the special status of the Commonwealth of Puerto Rico. It is a truly unique relationship and a new concept in the constitutional scheme of this country. Thus the Court should not have automatically applied the same criteria applied to the States, especially where the States are governed by the 14th Amendment, which has never been expressly held to apply to the Commonwealth. *Calero-Toledo, supra,* ft. 5 at 40 L.Ed. 2d 460. There the Court extended to Puerto Rico's statutes the same deference as state statutes, but that does not mean that the same test of construction is to govern both situations. Because the uniqueness of the contitutional and political relationship between the two sovereignties, purely local statutes should not be overturned unless there is no justification for them or its unconstitutionality is so obvious on its face and the government authority of the Commonwealth would be so untrammeled by the requirements of the fundamental constitutional rights, that both the United States Constitution and the Compact would be violated. The above test would not narrow the application of the fundamental rights of the people of Puerto Rico but

[6] There are now two cases before this Court which deal with the extension of the holdings in *Sugarman* v. *Dougall,* 413 U.S. 634 (1973), 37 L. Ed. 2d 910, 93 S. Ct. 2842, and *In Re Griffiths, supra,* to the Federal Government under the Fifth Amendment. *Wong Sun* v. *Hampton,* 500 F.2d 1031 (9 CA 1974), *cert. granted* 41 L. Ed. 2d 664, and *Ramos* v. *U.S. Civil Service Comm.,* 376 F. Supp. 361 (DPR 1974), appeal filed, 43 LW 3173. These cases might serve to clarify the scope of the prior holdings.

would rather recognize the relationship between the Compact and the applicable provisions of the United States Constitution.

If the above test were to be applied, then the District Court should have found that the statute involved reasonable means to achieve legitimate local interests or that there was a rational basis for the statute.

The District Court did not consider the special and unique situation of Puerto Rico in regard to the nature of the alien problem. The latest official information is that there are over fifty-four thousand aliens in Puerto Rico. Most of these aliens come from Spanish-speaking countries. Due to the common language, same cultural and historical background, same kind of climate, geography, and better educational and economic facilities in Puerto Rico, than in their orginal countries, these aliens tend to come to the Island rather than going to the other States where they would confront different conditions. If the Court considers that at the present time the Commonwealth if confronting serious overpopulation[7] and economic problems, especially in connection with its unemployment figure,

[7] The 1970 Census Report shows that the small island of Puerto Rico has a population 2,712,033 persons of which 52,792 are foreign born. (1970 Census Population, Detailed Characteristics, Puerto Rico, a United States Department of Commerce Publication; Table 110, page 52-601.) 851, 247,000 live in the San Juan metropolitan area, which has 43,264 foreign born. Id, at 53-603. This is due to the geography of the island and that the government and business concentrations are in this area. It should be noted that the vast majority of the foreign born are from Spanish-speaking countries. For example, there are 26,000 persons born in Cuba, 10,843 born in the Dominican Republic, 4,120 from Spain and 1,269 from Venezuela. Id. Table 112 at 53-621. There were in 1970, 5,800 Cubans living in the San Juan area. Id. 53-622.

which is almost double the national one,[8] that the per capita income is $1,834,[9] and that 76.5% of the basic food products and commodities have to be imported, thus causing generally higher prices, then the Court most find that the statute is valid and necessary. We submit that the above situation clearly establishes that the Commonwealth has either a compelling interest or a legitimate one in trying to partially control the negative effects of an uncontrolled influx of aliens into professions which can be legitimately regulated by the State, due to their impact in the public and the economy.

This is particularly so in the case of engineers, architects and surveyors, who play a major role in the industrial and economic expansion in the island. Construction is one of the first industries in Puerto Rico, both in the private and public sectors. That is why the Civil Code has always tried to protect those citizens who might suffer injuries due to construction defects and enacted Article 1483 of the Civil Code.[10] Also the Commonwealth has a duty to assure the citizenry that these professionals who are daily entering into contracts worth millions of dollars, have a sufficient in-

[8] The latest official figure is 17% of the labor force. But it is suspected that the real figures come close to 30%. These problems are compounded by the vast numbers of illegal aliens who enter into the island without adequate control by the federal immigration authorities.

[9] This is far less than the per capita income of the poorest state of the United States, Mississippi, which had approximately $3,000.

[10] See also the statutory scheme which gives the Secretary of the Department of Consumer Affairs the duty to regulate, impose fines, etc. on constructors who fail to live up to their obligations. 17 L.P.R.A. 501 to 519, as amended by Law 116 of June 7, 1963 (1974 Cumulative Pocket Supp., 17 L.P.R.A. 516 at page 6) These protections might also be affected by the decision herein.

terest in remaining in the island so they can be held accountable and responsible for their tortious or illegal acts. Obviously if aliens are permitted to practice the professions herein involved without any limitations, serious problem affecting the citizenry as a whole may arise.[11] For examples of opinions dealing with the engineering profession in P.R., see *Rasa Eng. Corp.* v. *Daubón,* 86 PRR 182 (1962), and *Pereira* v. *I.B.E.C.* 95 PRR 28 (1967).

We also submit that the decision in *Espinosa* v. *Farah Manufacturing Co., Inc.,* 414 U.S. 86, 38 L.Ed. 2d 287, 94 S.Ct. 334 (1973), tends to undermine the rationale in the *Sugarman* and *Griffiths* cases. *Espinosa* gives an almost absolut discretion to private employers in their hiring practices. Although it is true that *Espinosa* only interprets a federal statute, it will have far reaching effects. And the *Sugarman* and *Griffiths* effects might be further undermined if this Court rules in favor of the federal government in the cases now pending before it. (*Hampton* and *Ramos, supra*)

We repeat that in Puerto Rico the appropriate test should be that of a rational basis for legislation, in which case any valid interest would sustain the statute.

[11] It should be noted that appellees are not prohibited from practicing their profession. Under the statute they can and are presently employed by government agencies. The statute also provides that those aliens who study their career in Puerto Rico have the right to seek an unrestricted license. Thus, unlike the *Sugarman* situation, there is no undiscriminate prohibition. The legislators obviously thought that the evils to be corrected are not present in these two situations. The government engineers, etc., are only employees in public works and have an extensive supervision. The ones that complete their full studies in Puerto Rico have an interest in remaining in the island and they are already part of the community.

Dandridge v. *Williams,* 397 U.S. 471, 25 L.Ed. 2d 491, 90 S.Ct. 1153 (1970). But even if the compelling state interest test is used, the statute should be upheld.

CONCLUSION

WHEREFORE, Appellants respectfully submit that the judgments in this case should be reversed and that the District Court for the District of Puerto Rico should be ordered to dismiss the complaints.

San Juan, Puerto Rico, on this 14th day of July, 1975.

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Solicitor General

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Deputy Solicitor General

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1267

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, etc., *Appellants*

v.

MARIA C. FLORES DE OTERO, *Appellee*

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS, AND THE MEMBERS OF SUCH BOARD, *Appellants*

v.

SERGIO PEREZ NOGUERIO, *Appellee*

On Appeal from the United States District Court for the District of Puerto Rico

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QUESTIONS PRESENTED

I. Is an Alien Entitled to the Same Protection Under the Fourteenth Amendment as a Citizen?

II. Can 42 U.S.C.A. § 1983 Be Invoked by a Person Residing in Puerto Rico to Protect Fundamental Personal Constitutional Rights?

A. Does 42 U.S.C.A. Apply to the Territories Generally?

B. Is It the Purpose of 42 U.S.C.A. § 1983 to Include Puerto Rico Within Its Scope?

III. Can These Questions Involving Fundamental Personal Constitutional Rights Be Decided Without the Need for Abstention?

IV. Should This Court Apply the Strict Test of *In Re Griffiths* to the Justification Advanced by the Commonwealth for the Citizenship Requirement?

STATEMENT OF THE CASE

Appellees adopt the Statement made of the case by appellants at page 3 of their brief, as substantially correct.

SUMMARY OF ARGUMENT

Discrimination based on alienage alone is "invidious", hence, subject to the closest scrutiny. The right to work, to practice a profession, is a fundamental right, to which, aliens, as well as citizens, are entitled. Thus, the fact that a Fourteenth Amendment claimant to a fundamental right is an alien, is irrelevant to decision of the issue.

The case of *District of Columbia* v. *Carter,* 409 U.S. 418 (1973), held that, since it was the character and aim of the Civil Rights Act of 1871, as amended in 1874, 42 U.S.C.A. § 1983, to apply to territories because of the difficulty to Congress in regulating them directly, and since the District of Columbia does not present such a difficulty, it was not the intent of Congress to apply the Act to the District. Puerto Rico is more similar to a "State or Territory" than to the District of Columbia; hence, it must be the intent of Congress to have the Act apply to Puerto Rico as in

any "State or Territory". This intent has not changed since 1952, when the Constitution of Puerto Rico was adopted.

Abstention is inappropriate because the denial of a fundamental personal civil right is in issue, and because there is no complex, interlocking statutory or constitutional scheme in need of local clarification.

If the Civil Rights Act does apply to Puerto Rico, then it must apply as fully as in any "State or Territory". If not, the result would be the creation of a second-class citizenship for residents of Puerto Rico. The Commonwealth must therefore show a "compelling state interest" in justification of its classification, which it has failed to do.

ARGUMENT

I. AN ALIEN IS ENTITLED TO THE SAME PROTECTION UNDER THE FOURTEENTH AMENDMENT AS A CITIZEN.

It is indisputable—and undisputed—that for a State or territory to deny a lawfully admitted resident alien the right to earn a living solely because of his alienage is to deny him the equal protection of the laws under the Fourteenth Amendment, *Truax* v. *Raich,* 239 U.S. 33 (1915), and that such a right is a fundamental one, *In re Griffiths,* 413 U.S. 717 (1973); *Truax, supra.* Thus, lawfully admitted resident aliens are entitled to the same protection under the Fourteenth Amendment as are United States citizens, in this regard, and to deny the equal protection of the laws to aliens residing in Puerto Rico by finding the Civil Rights Act inapplicable *in* Puerto Rico is to deny it to the United States citizens residing in Puerto Rico. *Yick Wo* v. *Hopkins,* 118 U.S. 356, 369 (1886). The Common-

wealth ostensibly would deny this protection only to aliens residing in Puerto Rico. Implicit in this contention, however, is the unwarranted result that citizens of the United States residing in Puerto Rico would also be unprotected, since, in areas other than Puerto Rico, citizens and aliens are on the same footing in regard to the Act. For an extensive discussion of the application of Fourteenth Amendment rights to Puerto Rico, see *Montalvo* v. *Colón,* 377 F. Supp. 1332 (D.P.R., 1974).

II. 42 U.S.C.A. § 1983 CAN BE INVOKED BY A PERSON RESIDING IN PUERTO RICO TO PROTECT FUNDAMENTAL CONSTITUTIONAL RIGHTS.

In the present cases, lawfully admitted aliens resident in Puerto Rico are seeking relief from application to them of a statutory requirement of the Commonwealth of Puerto Rico which, were it a requirement imposed by one of the states, or by a territory (even as defined by appellants), would be a denial of the rights secured by the Fourteenth Amendment's equal protection clause. In asserting its right to this denial, the Commonwealth has attempted to exclude itself—as it must—from the meaning of the term "State or Territory" as used in the Civil Rights Act of 1871, 42 U.S.C.A. § 1983, which is the Fourteenth Amendment's enabling act. The basis for the exclusion in this Court's opinion in *District of Columbia* v. *Carter,* 409 U.S. 418 (1973).

A. Section 1983 Applies to the Territories Generally.

By its terms, Section 1983 provides a means of vindicating to anyone within the jurisdiction of the United States the rights, privileges, or immunities secured by the Constitution and laws, when they have been denied

by any other person acting under color of law of any state or territory.

Originally, the Act did not, by its terms, apply to action under color of the law of the territories. However, since 1874, when the Act was amended by the addition of the phrase "or territory", it has applied to such action. Although the purpose of the Act as it originally came into being seems to have been to provide indirect federal control over the unconstitutional actions of state officials (because in violation of Fourteenth Amendment rights), in amending the Act in 1874, Congress, acting under its power to regulate the territories under Act IV, § 3, cl. 2, extended the same type of protection without limitation to persons subject to the unconstitutional or illegal acts of territorial officials. *District of Columbia* v. *Carter, supra,* at footnote 11 and page 428, 409 U.S.

B. Puerto Rico Is Included Within the Scope of Section 1983.

Since before the adoption of the "compact" (P.L. 600), Puerto Rico was indisputably a territory subject to Article IV regulation, the Civil Rights Act, as amended in 1874, applied to actions of Puerto Rican officials.[1] Appellants argue, however, that after adoption of the compact in 1952, Puerto Rico's position in

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[1] Certain cases, notably *Downes* v. *Bidwell,* 182 U.S. 244 (1901) and *Balzac* v. *Porto Rico,* 258 U.S. 298 (1922), established a distinction between "incorporated" territories, on the one hand, where the Constitution was deemed fully to apply, and "unincorporated" territories (of which Puerto Rico was one), on the other hand, where only certain "fundamental" rights were deemed available. However, this distinction was never made as to a Fourteenth Amendment right, and, in any case, appellees submit that after *Mora* v. *Mejías,* 206 F.2d 377 (1st Cir., 1953); *Reid* v. *Covert,* 354 U.S. 1 (1957), and *Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 416 U.S. 663 (1974), the distinction is no longer viable.

the federal scheme changed, and it was no longer a "territory" for purposes of the Civil Rights Act, and that because of this new position, Puerto Rico is, like the District of Columbia, *sui generis*. However, their reliance on the *Carter* decision in making this argument is inappropriate.

This Court in *Carter* followed its decision in *Puerto Rico* v. *The Shell Co. (P.R.), Ltd.*, 302 U.S. 253 (1973), in finding that "whether the District of Columbia constitutes a "State" or "State or Territory" within the meaning of any particular statutory provision depends upon the character and aim of the specific provision involved, "having due regard for 'the context, the purposes of the law, and the circumstances under which the words were employed' ". 409 U.S. at 420. Thus, "whether [the Commonwealth of Puerto Rico] constitutes a . . . "State or Territory" within the meaning of [Section 1983] depends upon the character and aim of this section.[2]

Generally, the primary purpose of the 1871 version of the Act was to enforce the provisions of the Fourteenth Amendment in the States of the Union, (*Carter,* at p. 423) and, after the 1874 amendment, to extend, not the Fourteenth Amendment itself, but the type of protection it provides, to the territories, as an exercise of the power of Congress under Article IV, as stated above, because of the difficulty experienced in controlling the territories directly and, as a consequence of the delegation by Congress of some of its powers to territorial legislatures, the similarity between the territories and the States insofar as enforcement of civil rights was concerned. *Carter,* pp. 430-431.

[2] The Court also stated that the fact that Congress did not have Puerto Rico in mind at the time of the enactment of a statute was not enough to exclude Puerto Rico from the operation of the act, but it was necessary to go further and say that if acquisition of Puerto Rico had been foreseen, Congress would have so varied its comprehensive language so as to exclude Puerto Rico from the operation of the act.

Thus, it was apparent that it was the intent of Congress to subject the territories to indirect control through the federal courts. As to the District of Columbia, which is subject to the direct, day to day regulation of Congress, legislation such as Section 1983 was unnecessary.

Finally, the Court found in *Carter* that the territories and the District of Columbia cannot be analogized because of their differences in origin. The District was found to be unique, *sui generis,* within the federal system because of its creation by the Constitution.

The appellants, on the other hand, state that the Commonwealth is also *sui generis,* and conclude that therefore, under *Carter,* Section 1983 is also inapplicable. The fallacy in this argument is that, even assuming that the Commonwealth is in some sense *sui generis,* it does not follow that it is exempt from the application of the Act. There may be more than one concept of uniqueness in the federal system, but if, under the *Carter* reasoning, Puerto Rico is not subject to direct, day by day regulation by Congress,[3] and the Act applied before the Compact, then it is the type of

[3] That it is demonstrated by the very purpose of P.L. 600, which was to permit the people of Puerto Rico to rule themselves on matters of purely local concern. U. S. Code Congressional Serv. (1950), Vol. 2, pp. 2681 ff. Indeed, it is fair to say that, as to local matters, Puerto Rico has achieved at least the same degree of autonomy as the States of the Union. It is this very fact which requires application of the Act.

"State or Territory" (without any need to further define this phrase) to which it was the aim and purpose of Congress to apply the Act.

In conclusion therefore, Puerto Rico is in the same position vis á vis the Civil Rights Act as a State or as any other area under United States jurisdiction, except the District of Columbia.[4]

Appellants claim that the Federal Court refused to apply the Act to Puerto Rico prior to 1952. However, the decision cited by appellants, *Insular Police Commission* v. *López,* 160 F.2d 673 (1947) *cert. den.* 331 U.S. 855, denied jurisdiction to the district court on the basis of Sec. 8 of the Selective Service Act of 1940, 50 U.S.C.A. App. 308 (a-c, e) which conferred jurisdiction on the court to require reemployment of veterans by private employers, but not by the U.S. government or the territorial government of Puerto Rico. The Court also held that there was no jurisdiction under the Civil Rights Act because the suit was not brought against public officials as individual wrongdoers depriving appellee of his civil rights, but against the insular government, a subordinate arm of the U.S. government which had not consented to suit. The present suit has not been brought against the U.S. government or Commonwealth government but against the members of the Examining Board of Engineers, Architects and Surveyors.[5]

[4] Interestingly, if the Court should find Puerto Rico to be *sui generis* in the *Carter* sense, that is, subject to direct, day-to-day Congressional regulation, then it must find that the source of Congressional power over Puerto Rico is the Article IV Territories Clause, in which case Section 1983 would also apply.

[5] The District Court for Puerto Rico has repeatedly denied suits under the Civil Rights Act against the Commonwealth government and its agencies because of the doctrine of sovereign immunity to suit without consent, but has allowed actions against public officials. *Condico Development Co.* v. *Santiago Vázquez,* 354 F. Supp. 1355 (1972); *Toa Baja Development Corp.* v. *García Santiago,* 312 F. Supp. 899 (1970); *Inmobiliaria Borinquen* v. *García Santiago,* 295 F. Supp. 203 (1969).

Since, therefore, the Civil Rights Act was never held inapplicable in Puerto Rico, and it applied to the territories, the Act was applicable to Puerto Rico prior to 1952. Section 9 of Public Law 600, 48 U.S.C.A. 734, states that the statutory laws of the United States not locally inapplicable shall have the same force and effect in Puerto Rico as in the United States.[6] In every case that raised the issue of continued applicability of a federal statute after 1952, the federal courts have determined that the statutes apply since the compact manifested the intent of Congress and the consent of the people of Puerto Rico to the continued application of the law without the necessity of further action by Congress.[7] In view of Section 9 of the compact it was not necessary for Congress to alter specifically all outstanding statutes in order to continue their effectiveness in Puerto Rico. *U.S.* v. *De Jesús,* 289 F.2d 37

[6] This phrase or its equivalent has appeared in every initial Congressional act governing a territory. See Leibowitz, *The Applicability of Federal Law to the Commonwealth of Puerto Rico,* 56 Geo. L. J. 219, 234-39 (1967).

[7] *NLRB* v. *Security National Life Insurance,* 494 F.2d 336 (1 Cir. 1974); *Rodríguez Salgado* v. *U.S.,* 277 F.2d 653 (1 Cir. 1960); *Moreno Ríos* v. *U. S.,* 256 F.2d 68 (1 Cir. 1958); *Americana of Puerto Rico* v. *Kaplus,* 368 F.2d 431 (3 Cir. 1966); *SEC* v. *Quing Wong,* 252 F. Supp. 608 (D.C.P.R. 1966); *Cooperativa de Seguros* v. *Manuel San Juan,* 289 F. Supp. 983 (D.C.P.R. 1968); *U. S.* v. *Carrión,* 140 F. Supp. 226 (D.C.P.R. 1956); *U.S.* v. *Mejías,* 131 F. Supp. 957 (D.C.P.R. 1955); *Arbona* v. *Kenton,* 126 F. Supp. 366 (D.C.N.Y. 1954); *Carrión* v. *González,* 125 F. Supp. 819 (D.C. P.R. 1954); *Consentino* v. *ILA,* 126 F. Supp. 420 (D.C.P.R. 1954).

(1st Cir. 1961). Recently the Supreme Court of Puerto Rico held a federal statute applicable before 1952 to have continued application after 1952 since it was of national scope and not locally inapplicable. *Highland Realty, Inc.* v. *Tribunal Superior,* Civil No. 0-73-167 Opinion No. 17 of 1975. No federal statute which does not specifically exclude Puerto Rico has been held not to apply after 1952 with the exception of certain provisions of the admiralty law on maritime tort already held not applicable before 1952.

In conclusion, the Civil Rights Act, a statute of scope throughout the jurisdiction of the United States, and applicable to the states and territories before 1952, was continued effective through Section 9 of P.L. 600 and applies with the same force and effect as in the United States.

III. THE QUESTION PRESENTED IN THIS CASE CAN BE DECIDED WITHOUT THE NEED FOR ABSTENTION.

Appellants argue that the District Court should have abstained from reaching the constitutional issue. They rely first of all on *Harris County Comm. Court, et al.* v. *Moore,* U.S. (1975), and state that the cited case stands for the proposition that abstention is appropriate where the meaning or scope of the local law under scrutiny is unsettled under the state constitution. Actually, the preceding case is merely a special instance of the general tendency to abstain when the federal constitutional challenge turns on an unclear state statute, that is, if it is possible that a state court interpretation of the challenged statute will define its scope so as to avoid the need for a federal constitutional ruling, then the federal courts should abstain from deciding the federal claim. Conversely, where

there is no such possibility, there is no reason to abstain. Moreover, abstention is the exception rather than the rule, *Zwickler* v. *Koota,* 389 U.S. 31 (1962); *Marín* v. *University of Puerto Rico,* 346 F.Supp. 470 (D.P.R., 1972); *Cintrón* v. *State Board of Education,* 384 F.Supp. 674 (1974). While it is true that this Court favored abstention in Puerto Rican cases in *Fornaris* v. *Ridge Tool,* 400 U.S. 41 (1970), the basis of the decision was the possibility of the judicial confinement of "a rather vague Puerto Rican law" to a more narrow ambit which would avoid all constitutional questions, *Fornaris, supra.*

In the present case, we are not dealing with a complex statutory scheme (as in *Harris County*), or a vague law (as in *Fornaris*), but rather with the validity, under the federal constitution, of the inclusion of the citizenship requirement in a particular statute. As the District Court stated, "no conceivable gloss placed upon [the statutory requirement of citizenship] by the Supreme Court of Puerto Rico could turn aside plaintiff's argument that this classification based on alienage is unconstitutional." In other words, it has already been decided that the classification is unconstitutional, *In re Griffiths, supra,* and the most the Puerto Rico Supreme Court could do, under a federal constitutional challenge, is agree with the plaintiff. Abstention has been found not proper in other Civil Rights cases in Puerto Rico where the statute was held to be absolutely clear and admitting of no possibility of variance in interpretation. *Ortiz* v. *Colón,* 511 F.2d 1080 (1st Cir., 1974); *Santín Arias* v. *Examining Board,* 353 F.Supp. 857 (1972).

Appellants argue, citing *Reetz* v. *Bozanich,* 397 U.S. 82 (1970), that the District Court should have ab-

stained in order to give the Puerto Rican courts an opportunity to determine the validity of the citizenship requirement in the light of Section 1 of Article II (birth or social origin) and Section 7, Article II (equal protection clause), of the Constitution of Puerto Rico.

The *Reetz* holding, like that in *Harris County Comm. Court* v. *Moore,* U.S. (1975), turned on the fact that the challenged statute in each case was part of a complex, integrated scheme of constitutional provisions and statutes. In neither case was a fundamental constitutional right involved, as in the present cases, but, rather, *Reetz* involved business or commercial interests, and *Harris County* involved only a limited number of people (as opposed to the present cases where the Commonwealth is attempting to deny all Puerto Rico residents protection under the Fourteenth Amendment).

The Commonwealth would argue that while it may be true that in the 50 States the distinction is made, in abstention cases, between economic rights and "fundamental civil rights," *Harman* v. *Forssenius,* 380 U.S. 528 (1965); *Dombrowski* v. *Pfister,* 380 U.S. 479 (1965), in Puerto Rico the rule should be that abstention would apply in all federal question cases arising in Puerto Rico. This, of course, has the unsupportable result referred to in an earlier section of this brief, namely, the creation of a second-class constitutional right for all residents of Puerto Rico. Therefore, *Reetz* v. *Bozanich* is not controlling, and this Court should instead follow the *Zwickler* v. *Koota* ruling.

Appellants also argue (p. 7-8 Appellant's brief) that recent cases brought under the Civil Rights Act dealt with statutes which affected only purely local matters

and that none dealt with violations on account of race, religious belief or political philosophy. However, the District Court and the Court of Appeals for the First Circuit have found deprivations of rights because of political preference, *Oppenheimer Méndez* v. *Acevedo,* 388 F. Supp. 326 (D.P.R., 1974); *González* v. *González,* 385 F.Supp. 1226, deprivation of first amendment right, *Marín* v. *University of Puerto Rico,* 346 F. Supp. 470 (D.P.R., 1972); *Cintrón* v. *State Board of Education,* 384 F.Supp. 674 (1974), voting rights, *Ortiz* v. *Colón,* 511 F.2d 1080 (1974), and the right to privacy, *Acevedo* v. *Colón,* 377 F.Supp. 1332 (1974).

Appellants' argument that the District Court should have abstained so as to afford the Puerto Rico courts an opportunity to interpret the citizenship requirement in the light of Article 1483 of the Puerto Rico Civil Code was amply answered by the District Court in its opinion. To state that Article 1483 has to be construed in determining the validity of the citizenship requirement is to raise a false issue. The statute in question in these cases is not Article 1483, but 20 L.P.R.A. 689, which establishes the citizenship requirement.

The Commonwealth also attempts to apply the "due regard" concept of *Wackenhut Corp.* v. *Aponte,* 386 U.S. 268 (1967), an economic due process case, in which definitions of terms was required, and the "Spanish tradition" concept of *Fornaris* v. *Ridge Tool Co., et al.,* 400 U.S. 41 (1970), a commerce clause case, in which a "rather vague Puerto Rican law" was involved, to the present cases. The precedents, it is submitted, are inapposite where the claim is based on the deprivation of a fundamental constitutional right. To equate the deprivation of economic rights with the deprivation of fundamental, basic rights is to deny the

continuing validity of such cases as *Dandridge* v. *Williams,* 397 U.S. 471 (1970); *Shelton* v. *Tucker,* 364 U.S. 4796; and *Griffiths, supra.* Moreover, the Constitution of Puerto Rico is subordinated to the Constitution of the United States by Section 34 of the compact, 48 U.S.C.A. 731d; *ipso facto,* Commonwealth statutes must also be so subordinated.

Finally, appellants argue that the Supreme Court of Puerto Rico should be allowed to consider the validity of Commonwealth statutes. It is argued that, since appeals from the Puerto Rico Supreme Court to this Court are allowed by 28 U.S.C.A. 1258, there is no loss to constitutional claimants. However, if the claimant reserves his federal constitutional claim, as he has the right to do, *England* v. *Louisiana Medical Examiners,* 375 U.S. 411 (1964), and only the local constitutional issue is litigated, then no appeal will lie and the claimant must then resort to the federal court. Appellants would ask this Court to rule that the federal claim *must* be litigated in the local courts (thus providing for appeal, if the validity of the statute under attack is upheld), but it has already decided that where Congress has opened the federal forum, the courts cannot close it. *England, supra,* and *England* would have to be modified in the case of claimants residing in Puerto Rico. To do this with regard to such fundamental constitutional rights as the right to work, is out of line with all constitutional thinking.

IV. THE STRICT TEST OF IN RE GRIFFITHS SHOULD BE APPLIED IN THIS CASE, AND APPELLANTS HAVE FAILED TO MEET THIS TEST.

Appellants would have this Court apply a less strict test to the justifications advanced for discriminating against aliens than the "compelling state interest"

standard used in *Griffiths.* If a test is to be applied, that is, if the Commonwealth is required to justify its discrimination, it must be because Section 1983 does apply, but, according to appellants, to a different extent. Thus, it is assumed that we are dealing with a fundamental right, but that this right can be more easily violated in Puerto Rico than elsewhere.

The standard suggested by appellants is that of *Dandridge* v. *Williams,* 397 U.S. 471 (1970). However, their reliance on the case is unjustified. In appellees' understanding, the rationale of the decision in *Dandridge* is completely opposite to the result sought by the Commonwealth. In *Dandridge,* this Court declined to apply a strict test to Maryland's regulations for distribution of Aid for Dependent Children funds, but only because there was "no contention that the Maryland regulation was infected with a racially discriminatory purpose or effect such as to make it inherently suspect", 397 U.S., footnote 17. Yet, *Griffiths,* following a line of cases, held that a classification based on alienage is "inherently suspect." Thus, the rationale of *Dandridge* must be inapplicable to the present cases.

In attempting to meet the "compelling state interest" standard, the Commonwealth cites statistics such as total population unemployment figures and per capita income of the general population, when clearly the relevant population is that of architects, engineers, and surveyors.

Finally, the fear expressed by appellants that alien engineers are less subject to local control than citizen engineers is unfounded and inherently illogical.[8] First

[8] To say nothing of the fact that aliens are not excluded from the practice of law (P.R. Supreme Court, Rule 8) or dentistry (20 L.P.R.A. § 80).

of all, as the statistics cited by appellants (footnote 7 of their Brief) show, half of the aliens residing in Puerto Rico are Cuban-born. Clearly, these aliens are not likely to "flee" back to Cuba to avoid legal obligations in Puerto Rico. Secondly, the statutory scheme grants full licenses to aliens who have received their degrees in Puerto Rico, 20 L.P.R.A. § 689(3)(a), Second Paragraph. Presumably, these aliens are just as free to leave Puerto Rico as are those who studied elsewhere.

In any case, the Supreme Court of Puerto Rico has held, in *Empresas Capote, Inc.* v. *Superior Court,* Case No. 0-75-14, Opinion No. 89 of April 29, 1975, that the term "contractor" as used in Article 1489 of the Civil Code, 31 L.P.R.A. § 4130, is not limited to the meaning tied in to engineering, but rather "extends to the broadest meaning covering the person who binds himself to another to bring about or produce certain results or activities in exchange for a price certain." (Translation by Appellees.) In other words, under *Capote,* one need not be an engineer to be a "contractor." While it is true that the person claiming to be "contractor" in that case was an architect, there is nothing in the quoted language to indicate that anyone, regardless of formal training, or licensure, may not be a contractor.

Article 1489 is in the same Chapter and Sub-chapter of the Civil Code (Hiring of Work and Services, Works at Price Agreed Upon or for Lump Sum), as Article 1483. The conclusion is inescapable that regardless of whether the contractor of a building is an engineer, or of whether he is an alien or not, he will be responsible for his negligence under Article 1483. The public policy relied on by appellants to justify the

alienage classification—that the Commonwealth should be allowed to control who is to become an engineer because of his responsibility under Article 1483—is evidently not regarded as important as appellants do, by the Supreme Court of Puerto Rico, since the effect of the decision is to allow anyone, without limitation, to become a contractor. If this is so, there is no justification for requiring engineers alone, of all the people who may choose to be contractors, to be citizens of the United States.

CONCLUSION

The Civil Rights Act of 1871, as amended, 42 U.S.C.A. § 1983, applies without limitation in Puerto Rico. Consequently, the denial of licensure as engineers, architects and surveyors to aliens, by 20 L.P.R.A. § 689, is a denial of the equal protection of the laws.

The judgment of the District Court should be affirmed.

Respectfully submitted,

San Juan, Puerto Rico, this 27th day of August, 1975.

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In the Supreme Court of the United States

OCTOBER TERM, 1975

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, ET AL., APPELLANTS

v.

MARIA C. FLORES DE OTERO

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS, ET AL., APPELLANTS

v.

SERGIO PEREZ NOGUEIRO

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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SERGIO PEREZ NOGUEIRO

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's invitation dated May 27, 1975.

QUESTION PRESENTED

The United States will discuss the following question:

Whether the United States District Court for Puerto Rico may entertain civil actions under 42

U.S.C. 1983 and 28 U.S.C. 1343(3) and (4) to redress alleged deprivations of constitutional rights by officials of the Commonwealth of Puerto Rico acting under color of the laws of the Commonwealth.[1]

STATUTES INVOLVED

20 L.P.R.A. 689 (1973 Cum. Supp.) is reproduced at Appendix E to the Jurisdictional Statement.

42 U.S.C. 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

[1] Two other questions are presented:

If 42 U.S.C. 1983 and 28 U.S.C. 1343(3) and (4) are applicable, whether the federal district court should have abstained from deciding the constitutionality of the Commonwealth statute under which the defendants acted, until it was authoritatively construed by the courts of the Commonwealth; and

whether the Commonwealth's statute barring the licensing of alien engineers and architects from private employment is invidiously discriminatory.

The considerations bearing on the abstention issue have been thoroughly developed by the parties. As to the substantive issue, we note only that at present authority to admit or exclude aliens into the Commonwealth is vested exclusively in the federal government. 8 U.S.C. 1101(a)(38). Thus, Puerto Rico at present is subject to the same limitations with respect to the regulation of aliens as the States. See *Truax* v. *Raich*, 239 U.S. 33, 42; *Hines* v. *Davidowitz*, 312 U.S. 52, 63; *Graham* v. *Richardson*, 403 U.S. 365, 372; *Sugarman* v. *Dougall*, 413 U.S. 634; *In re Griffiths*, 413 U.S. 717. In two cases presently pending in this Court for reargument the United States is contending that its broad and exclusive powers over aliens and immigration warrant use of the rational basis standard to assess its regulation of aliens rather than the "compelling interest" criterion applied to the States. See our briefs in *Hampton* v. *Mow Sun Wong*, No. 73-1596, and *Weinberger* v. *Diaz*, No. 73-1046.

28 U.S.C. 1343 provides:

> The district courts shall have original jurisdiction for any civil action authorized by law to be commenced by any person:
>
> * * * * *
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
>
> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

INTRODUCTION AND SUMMARY OF ARGUMENT

That 42 U.S.C. 1983 and 28 U.S.C. 1343(3) apply in the Commonwealth of Puerto Rico is apparent from the language and purpose of those statutes, the past relationship between Puerto Rico and the United States, and the present status of the Commonwealth in the federal system.

The Commonwealth (Br. 6–10) does not question that applicable provisions[2] of the federal Constitution are effective in Puerto Rico. It contends, rather, that the consensual arrangements between the Congress and the people of Puerto Rico which, in 1952, established the Commonwealth within the federal system, render Sections 1983 and 1343 inapplicable. The Commonwealth is said to be analogous to the District of Columbia, whose unique place in the federal system puts it outside the concept of "State or Territory" in Section 1983. *District of Columbia* v. *Carter,* 409 U.S. 418.

The Commonwealth seems to contend that claims for redress of "rights, privileges, or immunities secured by the Constitution and laws" otherwise embraced in Section 1983 may be asserted in the federal district court in Puerto Rico only under that court's general federal question (28 U.S.C. 1331), diversity (28 U.S.C. 1332), or habeas corpus (28 U.S.C. 2254) jurisdiction (Com. Br. 6); or in actions in the Commonwealth's courts, which have both the duty and the power to protect federally secured rights. The latter is said to be a wholly adequate remedy because such actions are subject to review in this Court on

[2] The term "applicable provisions" reflects decisions of this Court which hold certain provisions of the Constitution not involving fundamental rights inapplicable to Puerto Rico. *Downes* v. *Bidwell*, 182 U.S. 244; *Balzac* v. *Porto Rico*, 258 U.S. 298. It has been suggested that the fundamental personal rights applicable in Puerto Rico closely approximated the guarantees in the Bill of Rights held applicable to the States under the Fourteenth Amendment. *Montalvo* v. *Colon*, 377 F. Supp. 1332 (D.P.R.; 3-judge court).

petition for a writ of certiorari to the Supreme Court of the Commonwealth under 28 U.S.C. 1258 (Com. Br. 9).[3]

With full respect for the Commonwealth's special place under the federal Constitution, we are constrained to disagree. In our view, the people of the Commonwealth are entitled to the same remedies for protection of their rights under the Constitution as the people of the fifty States. Anything less would be inconsistent with Sections 1983 and 1343(3), with the Commonwealth's present status, and with the intent Congress manifested in conferring on the United States District Court for Puerto Rico the same powers and responsibilities exercised by the federal courts in the several States. We submit that, as in the case of the federal territories, "the problem of enforcement of civil rights in [the Commonwealth is] more similar to the problem as it existed in the States than in the District of Columbia." *District of Columbia* v. *Carter,* 409 U.S. 418, 431.

Section 1983 provides a substantive remedy for the deprivation of rights secured by the Constitution and laws under color of the law of "any State or Territory" to persons within the jurisdiction of the United States. Jurisdiction to enforce these provisions is con-

[3] Whether acts by Commonwealth officials under color of Commonwealth law are within Section 1343 was a question expressly reserved by this Court in *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663, 677, n. 11. That course is open here also, since the jurisdiction of the district court could be sustained under 28 U.S.C. 1331: the claims arise under the Constitution and the value of an engineer's license presumably exceeds the $10,000 amount-in-controversy requirement.

ferred on the federal courts by 28 U.S.C. 1343 (3) and (4). These statutes apply to Puerto Rico as a matter of their plain language and their history. Although Section 1983 was originally enacted in 1871 because of conditions in the post-civil war South, it was extended in 1874 to all federal territories as well, because practical control of far-distant territorial officials by Congress was infeasible. *Carter, supra,* 409 U.S. at 430–431.

When Puerto Rico was acquired by the United States from Spain in 1898 its people came within the Constitution's fundamental protections for individual rights. *Downes* v. *Bidwell*, 182 U.S. 244, 283. This protection was reinforced when Puerto Ricans became citizens of the United States in 1917, and continued when the present arrangement in the nature of a compact between Congress and the people of Puerto Rico under P.L. 600, 64 Stat. 319, resulted in establishment of the Commonwealth.

With the establishment of civil government under the American flag in the Foraker Act of 1900 (31 Stat. 77), a United States district court, separate and distinct from the local court system, was established. Its original jurisdiction was identical to the jurisdiction of the lower federal courts in the States, and today its judges, with life tenure, exercise the same jurisdiction, powers and responsibilities as do all other United States district courts. These include full power under 28 U.S.C. 1343(3) and (4) to enforce Section 1983 against local officials.

The *Carter* case recognized that Section 1983

applies to the States under the Fourteenth Amendment and Territories under Article IV. Unconstitutional discrimination by Commonwealth officials can be reached whether the Commonwealth be viewed for purposes of Section 1983, as a State or Territory, since the people of Puerto Rico are entitled to equal protection of the laws under the Due Process Clause of the Fifth Amendment, if not the Fourteenth Amendment. While the Commonwealth, like the District of Columbia, occupies a *sui generis* position in the federal system, it is not analogous to the District constitutionally, historically, or under its existing relationship with the United States. Although not a State in the constitutional sense, it is a State in the political sense of that term, in free and consensual association with the United States under the Constitution. "[I]ts sovereign status and functional independence from Congressional control—call with equal force for the special protection of the Commonwealth's citizens against unwarranted and otherwise insufficiently checked governmental action provided by 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3)." *Ortiz* v. *Hernandez*, 511 F. 2d 1080, 1082 (C.A. 1).

ARGUMENT

THE PEOPLE OF PUERTO RICO ARE PROTECTED BY 42 U.S.C. 1983 AND 28 U.S.C. 1343(3) AND (4)

A. *The Language of 42 U.S.C. 1983 and 28 U.S.C. 1343 Applies to Puerto Rico.*

The substantive statute invoked by appellees, Section 1983, provides a civil remedy against "[e]very

person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects * * * any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws * * *." Jurisdiction to enforce this statute is conferred on the federal district courts by 28 U.S.C. 1343(3),[4] which empowers those courts to redress "the deprivation, under color of any State law, * * * of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."[5]

[4] 28 U.S.C. 1343(4) confers jurisdiction upon the district courts over any action "[t]o recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote." This provision was added to the Judicial Code in the Civil Rights Act of 1957, 71 Stat. 637. Although characterized in the legislative history as a technical amendment to the Code designed to conform it to the 1957 Act (H.R. Rep. No. 291, 85th Cong., 1st Sess. 11 (1957)), it has not been confined to voting rights. *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 412, n. 1. Section 1983 is plainly a federal statute providing for the protection of civil rights, and jurisdiction under Section 1343(4) may be predicated on it in this case at least to the same extent it exists under Section 1343(3). Indeed, it is literally broader than Section 1343(3) since it is not limited to deprivations "under color of any State law * * *." Thus even if Section 1343(3) were held inapplicable to the Commonwealth, Section 1983 could be enforced there under Section 1343(4).

[5] While Section 1983 creates a substantive claim for relief, it does not, in and of itself, confer jurisdiction upon the federal district courts. That function is performed by Section 1343(3). *Hagans* v. *Lavine*, 415 U.S. 528, 535.

Persons residing in Puerto Rico are unquestionably citizens or persons "within the jurisdiction of the United States" under Sections 1983 and 1343(3). The Commonwealth, however, in effect denies that, for purposes of Section 1983 and its jurisdictional counterpart, its officials, in carrying out its laws, are acting "under color of" the laws of any "State or Territory."

The meaning of the term "State or Territory" as applied to entities such as the District of Columbia and the Commonwealth "depends upon the character and aim of the specific provision involved." *Carter, supra,* 409 U.S. at 420; *Puerto Rico* v. *Shell Co.,* 302 U.S. 253, 257–259 (Section 3 of the Sherman Act applies to Puerto Rico as a "territory"); *Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 416 U.S. 663, 669–676 (statutes of Puerto Rico are state statutes for purposes of 28 U.S.C. 2281). The history of Section 1983 and Section 1343(3) confirm that their "character and aim" render them applicable to Puerto Rico in its present Commonwealth status.

B. *The History of Sections 1983 and 1343(3) is Consistent With Their Application to Puerto Rico.*

Section 1983 is derived from Section 1 of the Civil Rights Act of 1871, 17 Stat. 13. Its original purpose was to enforce the Fourteenth Amendment in the States (*Carter, supra,* 409 U.S. at 423; *Lynch* v. *Household Finance Corp.,* 405 U.S. 538, 545; *Monroe* v. *Pape,* 365 U.S. 167, 171). It was extended to federal territories, however, in 1874, presumably under Con-

gress' power to regulate the territories under Article IV, Section 3, clause 2, to assure equal protection of the laws under the Due Process Clause of the Fifth Amendment. *Carter, supra,* 409 U.S. at 423–424.

The 1871 enactment defined the substantive claim and the lower courts' jurisdiction in the same section. When Congress codified existing law in 1874, the substantive and jurisdictional provisions were separated, and the phrase "or Territory" was added to the substantive provision (Rev. Stat. 1979) without explanation. *Lynch* v. *Household Finance Corp., supra,* 405 U.S. at 543–544, n. 7; *District of Columbia* v. *Carter, supra,* 409 U.S. at 424, n. 11. No reference to "Territories" was added, however, to the jurisdictional provisions (Rev. Stats. 563(12), 629(16)), and the difference was not expressly noted. See 1 Revision of U.S. Stat., Title XIII, pp. 317, 359 (1872 draft).

The difference between the substantive and jurisdictional provisions, with respect to acts under the color of the law of any territory, was not intended as a jurisdictional limitation. Obviously, it would have been irrational for Congress expressly to extend the substantive provision to the territories, but simultaneously to confine jurisdiction to violations under color of state law. Instead, as shown by comparison of the provisions of the Revised Statutes defining the jurisdiction of the district and circuit courts and the jurisdiction of the territorial courts, Congress intended that the territorial courts would exercise, within their geographic areas, the same jurisdiction under federal law that the district and

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circuit courts exercised in the states, which included jurisdiction to enforce what is now Section 1983.[8]

Moreover, this Court has indicated that despite differences in their wording, Sections 1983 and 1343(3) are to be construed identically. *Lynch* v. *Household Finance Corp., supra,* 405 U.S. at 543–544 n. 7. See Hart and Wechsler, *The Federal Courts and the Federal System* 961 (2d ed. 1973). Thus, by 1874, the lower federal courts in the States and federal Territories had jurisdiction over a new federal remedy to protect individual rights secured by the Constitution against deprivations by State or Territorial officials acting under color of local law.

This new federal remedy was adopted despite the fact that the states had local court systems whose judges were sworn to uphold the federal Constitution,

[8] The district and circuit courts' geographic jurisdiction was confined to the states (Rev. Stats. 530–559, 551, 608 (1874)), except that the district courts in California and Oregon had certain jurisdiction over Alaska. Rev. Stat. 1957 (1874). Deprivations of rights under color of territorial law, therefore, would ordinarily not come before them. In the territories other than Alaska (*i.e.*, New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming), the territorial courts of the day exercised local common law and chancery jurisdiction (Rev. Stats. 1865–1868 (1874)), and "the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States * * *" (Rev. Stat. 1910 (1874); for Washington Territory, see Section 1911 as corrected in 1878). Thus, the revisors must have intended the territorial courts to have the same jurisdiction to remedy deprivations of rights under the color of territorial law under Rev. Stat. 1979 (1874) that the lower federal courts in the states already had under Rev. Stats. 563(12) and 629(16) (1874) to remedy deprivations under color of state law.

and whose tribunals were vested with the jurisdiction necessary to do so. The federal remedy was independent of any state remedies, and their availability is no barrier to suit in federal court. *Monroe* v. *Pape, supra,* 365 U.S. at 183. Moreover, although originally enacted because of conditions in the post-Civil War South, the law was generally worded to protect all persons in the jurisdiction of the United States. *Ibid.* Thus, the Commonwealth's contentions that its courts are able and willing to protect civil rights, and that the conditions which led to enactment of the federal remedy have never existed in Puerto Rico (Com. Br. 11–12) are beside the point.[7]

Congress created an independent federal remedy because it concluded that it could not rely on the state courts to vindicate essential rights arising under the Constitution and federal laws. *Carter, supra,* 409 U.S. at 426–629. See *Zwickler* v. *Koota,* 389 U.S. 241, 245–248. Since the territories engaged in legislative activities almost as broad as those of the states, and practical control by Congress under Article IV was not feasible because of the distances involved, a similar remedy was deemed necessary in the territories. *Carter, supra,* 409 U.S. at 430–431.

C. *Fundamental Constitutional Rights Apply to the People of Puerto Rico.*

In 1874, of course, Puerto Rico was not within the

[7] Nor does the availability of strong due process and equal protection guarantees in the Constitution of the Commonwealth foreclose the federal remedy. *Monroe* v. *Pape, supra,* 365 U.S. at 183. Cf. *Home Telephone and Telegraph Co.* v. *City of Los Angeles,* 227 U.S. 278.

jurisdiction of the United States. But upon its acquisition from Spain by the Treaty of Paris following the Spanish-American War (30 Stat. 1754), its people came within the Constitution's fundamental protection of individual rights. This was recognized in Congress when the Foraker Act, providing special tariff treatment and a civil government for the island, was debated and adopted in 1900 (31 Stat. 77),[8] and by this Court. *Downes* v. *Bidwell,* 182 U.S. 244, 283–284; *Balzac* v. *Porto Rico,* 258 U.S. 298, 312–313.

[8] Debate over the Foraker Act was initially focused in the House on whether a tariff could be provided for the importation of Puerto Rican goods into the United States and American goods into Puerto Rico, the proceeds to be used for the benefit of the government of Puerto Rico. The debate concerned the constitutionality of the bill under Article I, Section 8, clause 1, of the Constitution, which requires that all duties shall be uniform throughout the United States. The question therefore was whether Puerto Rico was part of the United States for purposes of this requirement. In the House, Representative Payne, the bill's leading proponent and Chairman of the Committee on Ways and Means, argued that the bill was necessary, and further contended that until the people of Puerto Rico were ready for American citizenship, "give them all the rights accorded to our own people under the Constitution, consistent with their best interest and well-being." 33 Cong. Rec. 1946 (1900). In the Senate, extensive provisions for a civil government were added to the tariff bill. The Senate Committee believed that the people of Puerto Rico were entitled to the privileges and immunities of citizenship, and accordingly proposed to grant them citizenship. S. Rep. No. 249, 56th Cong., 1st Sess. 8 (1900). See also 33 Cong. Rec. 2473–2474, 2658–2659 (1900). The grant of citizenship was later deleted (33 Cong. Rec. 3690 (1900)) on the theory that it might render the tariff provision unconstitutional. Nevertheless, the Foraker Act expressly provided in Section 14 that "the statutory laws of the United States not locally inapplicable, * * * shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws * * *." 31 Stat. 80 (see p. 21, n. 16, *infra*).

When the question of the validity of the tariff imposed by the Foraker Act came before this Court in 1901, it held that Puerto Rico was not part of the United States within the revenue clauses of the Constitution. *Downes* v. *Bidwell, supra.* Nevertheless, the Court cautioned that the people of Puerto Rico, even though then aliens, were within the jurisdiction of the United States for purposes of the Constitution's fundamental guarantees of individual rights, including due process and equal protection of the laws. In the opinion announcing the Court's judgment, Mr. Justice Brown observed (182 U.S. at 283):

> Whatever may be finally decided by the American people as to the *status* of these islands and their inhabitants—whether they shall be introduced into the sisterhood of States or be permitted to form independent governments—it does not follow that, in the meantime, awaiting that decision, the people are in the matter of personal rights unprotected by the provisions of our Constitution, and subject to the merely arbitrary control of Congress. Even if regarded as aliens, they are entitled under the principles of the Constitution to be protected in life, liberty and property. [Emphasis in original.[9]]

A generation later, the Court, in *Balzac* v. *Porto Rico, supra,* emphasized that "[t]he Constitution of the United States is in force in Porto Rico as it is wherever and whenever the sovereign power of that

[9] See also 182 U.S. at 291, 294 (Justices White, Shiras and McKenna, concurring).

government is exerted. * * * The guaranties of certain fundamental personal rights declared in the Constitution, as for instance that no person could be deprived of life, liberty or property without due process of law, had from the beginning full application in the Philippines and Porto Rico * * *." 258 U.S. at 312-313. Accord, *Calero-Toledo* v. *Pearson Yacht Leasing Co., supra,* 416 U.S. at 668–669, n. 5; *Mora* v. *Mejias,* 206 F. 2d 377, 382 (C.A. 1).[10]

In 1917 Congress conferred United States citizenship upon the citizens of Puerto Rico and codified a Bill of Rights for them in the Jones Act, 39 Stat. 951. This statute governed the islands' status until 1947, when legislation was adopted providing for the popular election of the governor and declaring that "[t]he rights, privileges, and immunities of citizens of the United States shall be respected in Puerto Rico to the same extent as though Puerto Rico were a State of the Union * * *." 61 Stat. 772–773.[11]

[10] Section 1891 of the Revised Statutes (1878) provided that "[t]he Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized as elsewhere within the United States."

The Foraker Act, unlike the Act establishing a civilian government for the Philippines, 32 Stat. 691, did not explicitly render this provision inapplicable to Puerto Rico. Rev. Stat. 1891 is mentioned in the opinion of Mr. Justice Brown in *Downes* v. *Bidwell, supra,* 182 U.S. at 257, but was not relied upon.

[11] Section 8 of the 1947 legislation, containing the privileges and immunities language, was added by the Senate to H.R. 3309, 80th Cong., 1st Sess. (1947). The Senate Committee explained that its purpose was to bring Puerto Rico expressly within the operation of the Comity Clause [of Article IV, Section 2, of the Constitu-

The application to Puerto Rico of the Constitution's fundamental individual rights was not changed by the creation of the Commonwealth between 1950 and 1952. This arrangement, "in the nature of a compact," was offered to and accepted by the people of Puerto Rico under P.L. 600, 64 Stat. 319, 48 U.S.C. 731b–731d. The Constitution of the Commonwealth adopted by the Puerto Rican people under P.L. 600 recites in its preamble that it is created "within our union with the United States of America," and declares among the "determining factors in our life, our citizenship of the United States * * * and * * * our loyalty to the principles of the federal Constitution * * *." [See note following] 48 U.S.C. 731d. When Congress approved this Constitution under P.L. 600, it conditioned its ratification on a requirement that any amendment or revision should be consistent with "the applicable provisions of the Constitution of the United States." 66 Stat. 327.[12]

Thus, both before and after Commonwealth status, the fundamental personal guarantees of the Constitution have applied with full force in Puerto Rico.[13]

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tion] so as to leave no doubt that there may be no discrimination against citizens of the United States who are not residents of Puerto Rico. See S. Rep. No. 422, 80th Cong., 1st Sess. 3–4 (1947); 93 Cong. Rec. 10402 (1947) (remarks of Senator Butler).

[12] See also *Calero-Toledo*, *supra*, 416 U.S. at 671–672. And see *Status of Puerto Rico*, Report of the United States-Puerto Rico Commission on the Status of Puerto Rico, pp. 31–37 (1966); Leibowitz, *The Applicability of Federal Law to the Commonwealth of Puerto Rico*, 56 Geo. L.J. 219, 221 (1967); Magruder, *The Commonwealth Status of Puerto Rico*, 15 U. Pitt. L. Rev. 1 (1953).

[13] On August 1, 1975, the Ad Hoc Advisory Group on Puerto Rico, established under P.L. 88–271, 78 Stat. 17, approved a "Compact of Permanent Union between Puerto Rico and the United States," to be recommended to the President of the United States and the Governor of Puerto Rico (hereinafter, "Recommended Compact"). This recommendation, if adopted, would effect numerous changes in the present status of Puerto Rico. However, it would continue to recognize the applicability of the Constitution and laws of the United States, leaving to this Court the final decision "whether the laws of the United States or of Puerto Rico conform to this Compact and the Constitution and applicable laws of the United States." Recommended Compact, Art. 2(c)(4). Laws of the United States applicable to Puerto Rico on the date of the approval of the Recommended Compact would continue in effect except to the extent incompatible with it or expressly modified. Recommended Compact, Art. 12.

We next show that to secure these and other federal rights, Congress established a federal district court in Puerto Rico, independent of the local courts, with the same powers and responsibilities as federal courts on the mainland. This necesarily included, and continues to include, jurisdiction under Section 1343(3) to grant relief, pursuant to Section 1983, for deprivations of fundamental personal rights by Commonwealth officials acting under color of the Commonwealth's laws.

D. *The Federal District Court in Puerto Rico has Long Been Empowered to Enforce Section 1983.*

A federal district court, separate and distinct from the existing local court system, was established in Puerto Rico simultaneously with the initiation of American civil government. Congress was aware that the Constitution's fundamental guarantees of personal rights would apply (see discussion, *supra*, pp. 12–16), "and, as this guaranty is one of the most fruitful in causing litigation in our own country, pro-

vision was naturally made for similar controversy in Porto Rico." *Balzac* v. *Porto Rico, supra*, 258 U.S. at 313. The Foraker Act recognized the courts and tribunals of Puerto Rico "as already established," but provided in addition for a "district court of the United States for Porto Rico" which in addition to the ordinary jurisdiction of the district courts of the United States, was to have "jurisdiction of all cases cognizant in the circuit courts of the United States." 31 Stat. 84. Thus from 1900, the federal court in Puerto Rico had, by reference to existing statutes, the same original jurisdiction as the lower federal courts in the States on the mainland, except as otherwise specifically provided. *Munoz* v. *Porto Rico Ry. Light & Power Co.*, 83 F. 2d 262, 264–266 (C.A. 1), certiorari denied, 298 U.S. 689. Those courts had jurisdiction to hear all claims under the predecessors of Sections 1983 and 1343(3),[14] including claims of deprivations of constitutional rights under color of territorial law. See Rev. Stat. 1979 (1874).

The 1917 Organic Act continued this jurisdiction. It provided simply that the federal district court in Puerto Rico "shall have jurisdiction of all cases cognizable in the district courts of the United States,

[14] Both the district courts and circuit courts had original jurisdiction over such suits, although after the 1874 codification the circuit courts' jurisdiction appeared limited to equal protection claims. Compare 17 Stat. 13, with Rev. Stats. 563(12) and 629(16). The circuit courts' original jurisdiction was transferred to the district courts in 1911. 36 Stat. 1087. See *Lynch* v. *Household Finance Corp.*, *supra*, 405 U.S. at 543–544, n. 7.

and shall proceed in the same manner." 39 Stat. 965.

The jurisdiction of the district court was not repealed or modified when the Commonwealth was established. It was continued under the Puerto Rico Federal Relations Act, which contains those sections of the 1917 Organic Act not repealed by P.L. 600, 64 Stat. 319. See note following 28 U.S.C. 119.[15] Indeed, fourteen years after the Commonwealth was proclaimed, Congress adopted legislation confirming that the United States District Court for Puerto Rico is identical in responsibilities with district courts on the mainland. It also conferred the same life tenure on judges of the District of Puerto Rico as held by all other judges in the federal district courts. 80 Stat. 764.

The House Committee which reported the life tenure bill (H.R. 3999, 89th Cong., 1st Sess. (1965)) expressly noted the identity of jurisdiction between the district court for Puerto Rico and federal district courts in the States, and the importance of maintaining a federal forum in Puerto Rico, independent of the Commonwealth government, which would assure protection of federal rights (H.R. Rep. No. 135, 89th Cong., 1st Sess. 2–3 (1965)):

> The U.S. district court in Puerto Rico is in its jurisdiction, power and responsibilities the same as the U.S. district courts in the several

[15] The jurisdiction of the United States district court would continue under Article 16 of the Recommended Compact (*supra*, n. 13, p. 17).

States. It exercises only Federal jurisdiction, the local jurisdiction being exercised by a system of local courts headed by a Supreme Court of the Commonwealth of Puerto Rico.

* * * * *

Moreover, Federal litigants in Puerto Rico should not be denied the benefit of judges made independent by life tenure from the pressures of those who might influence his chances of reappointment, which benefits the Constitution guarantees to the litigants in all other Federal courts. These judges in Puerto Rico have and will have the exacting same heavy responsibilities as all other Federal district judges and, therefore, they should have the same independence, security, and retirement benefits to which all other Federal district judges are entitled.

* * * * *

Finally, the Commonwealth of Puerto Rico is a free state associated with and subject to the Constitution and laws of the United States, but not a State of the Union. It has virtually complete local autonomy and it seems proper, therefore, to accord it the same treatment as a State by conferring upon the Federal district court there the same dignity and authority enjoyed by the other Federal district courts. Another reason for providing life tenure for the judges of the U.S. District Court for Puerto Rico is that the court is now the only judicial agency in Puerto Rico which is independent of the Commonwealth government and it will aid the district judges to perform their functions impartially, particularly in those cases involving the Federal Government on one side and the Commonwealth government on the other if they have the full independence inherent in a life tenure appointment.

In the light of this history, as well as the statute's express reference to territories, we submit that Section 1983 was enforceable in the federal district court in Puerto Rico before Commonwealth status, and that court's jurisdiction under Section 1343(3) was not repealed, either expressly or by implication, when P.L. 600 was implemented.

The Commonwealth seems to contend (Br. 8, 9) that jurisdiction under Section 1343(3) is so irreconcilably inconsistent with Commonwealth status as to support the conclusion that the district court's jurisdiction was repealed by implication as a result of P.L. 600 and the joint resolution which ratified the Commonwealth's constitution. We submit, however, that since P.L. 600 did not purport to modify the district court's jurisdiction and Congress in 1966 conferred life tenure to assure federal litigants a judicial agency independent of the Commonwealth government, it would be inconsistent with the legislative purpose to infer a repeal.[16]

[16] The Commonwealth does not contend that the exception in Section 9 of the 1917 Organic Act, 39 Stat. 954, which was continued in effect in the Puerto Rico Federal Relations Act, 48 U.S.C. 734, affects the jurisdiction of the district court. This statute declares that "statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States * * *." In any event, the protection of the civil rights of the inhabitants of Puerto Rico under the Constitution is not of purely local concern, since it results directly from the Commonwealth's participation in the federal system. Cf. *Cæribtow Corp.* v. *Occupational Safety and Health Review Commission*, 493 F. 2d 1064 (C.A. 1). See also *United States* v. *Price*, 383 U.S. 787, 806.

E. *The Commonwealth's Status is Not Analogous to that of the District of Columbia for Purposes of Section 1983.*

The Commonwealth rests its argument on *Carter,* which held that the District of Columbia is not a "State or Territory" within the meaning of Section 1983, because it is "*sui generis*" in the federal system. We submit, however, that the reasoning of *Carter* points in the opposite direction.

As to the argument that Puerto Rico is not a State under the Fourteenth Amendment, we submit that, as pointed out in *Carter,* Section 1983 is not only an exercise of Congress' power under the Fourteenth Amendment, but, as applied to the territories, it was an exercise of Congress' powers under Article IV to assure equal protection of the laws under the Due Process Clause. 409 U.S. at 423–424. The fundamental requirements of due process, whether under the Fifth or Fourteenth Amendments, bar the denial under color of government authority of equal protection of the laws.[11] Section 1983 literally applies to both states and territories, so that unconstitutional discrimination by Commonwealth officials can be reached thereunder whether viewed, for purposes of the statute, as action "under color of" the laws of a State or a Territory.

Second, although Puerto Rico occupies a *sui generis* position in the federal system, it is not analogous to the District of Columbia. The District is a permanent

[11] *Bolling* v. *Sharpe*, 347 U.S. 497; *Shapiro* v. *Thompson*, 394 U.S. 618, 641–642; *Schneider* v. *Rusk*, 377 U.S. 163, 168; *Frontiero* v. *Richardson*, 411 U.S. 677, 680, n. 5 (opinion of Brennan, J.).

constitutional entity under the direct control of Congress (Art. I, Sec. 8, cl. 17) designated as the seat of the national government. *Carter, supra,* 409 U.S. at 432. Puerto Rico is presently associated with the United States by consensual arrangements "in the nature of a compact" (48 U.S.C. 731b), which Congress is empowered to enter into under Art. IV, Sec. 3, of the Constitution. Before obtaining Commonwealth status, Puerto Rico was quite plainly a territory within the meaning of Section 1983. Its geographical separation from the seat of government and the extent of its self-government brought it within the spirit, as well as the letter, of that statute. This was not true of the District. In *Carter*, the Court reasoned that, like officials of the federal government itself, the District's officials were under the direct observation, supervision and control of Congress. There was, therefore, no need for special legislation to provide a judicial safeguard against denial by District officials of individual rights secured by the Constitution. State officials, however, were not subject to such control. And, as a practical matter, effective and detailed control by Congress over the distant territories was also infeasible; in consequence, the territories' exercise of local self-government was nearly as broad as that of the States. The same was, and is, true of Puerto Rico. Accordingly, the considerations that led Congress to bring the states and territories, but not the District, within Section 1983 apply equally to Puerto Rico.

After Commonwealth status, "Puerto Rico [did] not become a State in the federal Union like the 48 states, but it would seem to have become a State within a common and accepted meaning of the word." *Mora* v. *Mejias*, 206 F. 2d 377, 387 (C.A. 1), quoted with approval in *Calero-Toledo* v. *Pearson Yacht Leasing Co., supra,* 416 U.S. at 672. The Commonwealth's special status and constitution have made it basically similar to the States in being "sovereign over matters not ruled by the [federal] Constitution" (*Stainback* v. *Mo Hock Ke Lok Po,* 336 U.S. 368, 378). See *Calero-Toledo, supra,* 416 U.S. at 673. Thus, the considerations that led the Court in *Calero-Toledo* to classify the Commonwealth as a state for purposes of the three-judge statute (28 U.S.C. 2281) also apply to Sections 1983 and 1343(3). As Judge Aldrich explained for the First Circuit (*Ortiz* v. *Hernandez Colon,* 511 F. 2d 1080, 1082):

> [T]he very reasons which called in *Calero Toledo* for the Commonwealth's special protection by a three-judge district court as a matter of comity and respect—its sovereign status and functional independence from Congressional control—call with equal force for the special protection of the Commonwealth's citizens against unwarranted and otherwise insufficiently checked governmental action provided by 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3).
>
> The citizens of the several states are permitted to seek redress in the federal courts for deprivation of their rights under color of state law without first seeking relief in the state courts. *Monroe* v. *Pape*, 1961, 365 U.S. 167, 183, 81 S.Ct. 473, 5 L.Ed.2d 492. We yield to no one in our regard for the Supreme Court of Puerto Rico, but at the same time, if citizens of the several states may call for an initial decision in the district court without deferring to the courts of their local state, we must wonder how we could conscientiously hold that under 28 U.S.C. § 1343 United States citizens resident in Puerto Rico are any less entitled.

In summary, therefore, we submit that as a state, in the ordinary sense of the term, which is in free and consensual association with the United States,[18] Puerto Rico continues to be subject to the guarantees of individual rights which the federal Constitution ensures to all who live in Puerto Rico, whether its status be viewed as that of a "state" or "territory" for purposes of Section 1983. Moreover, the federal district court in Puerto Rico has the same jurisdiction and responsibility for the protection of those rights as the federal courts on the mainland. Like the States, the Commonwealth has its own court system which is required to enforce the Constitution. Despite this, Congress considered the availability of a federal forum, independent of the Commonwealth government, to be of prime importance. See pp. 19–20,

[18] The literal translation of the Commonwealth's official name in Spanish—El Estado Libre Asociado de Puerto Rico—is the "Free Associated State of Puerto Rico." The official translation—the "Commonwealth of Puerto Rico"—was adopted to differentiate Puerto Rico from the States of the Union. Magruder, *supra*, 15 U. Pitt. L. Rev. at 14, n. 92. The Recommended Compact, *supra*, n. 13, p. 17, would adopt the literal translation as the official name. Art. 1.

supra. When Congress, in adopting the legislation now reflected in Sections 1983 and 1343, provided a separate federal tribunal for the protection of rights secured by the Constitution, it "imposed the duty upon all levels of the federal judiciary to give due respect to a suitor's choice of a federal forum for the hearing and decision of his federal constitutional claims." *Zwickler* v. *Koota*, 389 U.S. 241, 248. That duty remains in full force in Puerto Rico."[19]

CONCLUSION

For the reasons stated, we believe that 42 U.S.C. 1983 and 28 U.S.C. 1343(3) and (4) apply in the Commonwealth of Puerto Rico.

Respectfully submitted.

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[19] The Department of Justice has filed cases and obtained convictions in Puerto Rico under 18 U.S.C. 242, the criminal counterpart to Section 1983. See *United States* v. *Price*, 383 U.S. 787, 794, n. 7. Like Section 1983, Section 242 was broadened in the 1874 revision of the federal statutes. *Id.* at 803. It protects inhabitants of "any State, Territory, or District" from willful deprivations of federal rights under color of law.